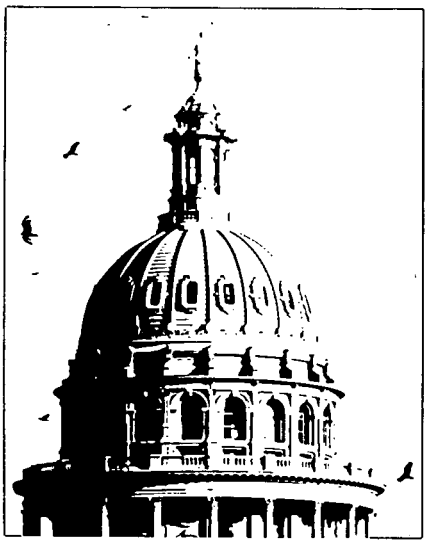
Texas House of Representatives



Interim Report to the 68th Texas Legislature

Committee on Judicial Affairs

INTERIM REPORT OF THE
JUDICIAL AFFAIRS COMMITTEE
TEXAS HOUSE OF REPRESENTATIVES
THE SIXTY-EIGHTH LEGISLATIVE SESSION
1982

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BUCK FLORENCE
CHAIRMAN

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STATE OF TEXAS
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIAL AFFAIRS
P.O. BOX 2910
AUSTIN, TEXAS 78769

September 1982

The Honorable Bill Clayton, Speaker
Members of the House of Representatives
Texas State Capitol
Austin, Tx.

Dear Mr. Speaker and Fellow Members:

The Committee on Judicial Affairs of the 67th Legislature herewith presents its report and recommendations for consideration by the Speaker and members of the 68th Legislature.

Respectfully submitted,

Buck Florence, Chairman

Anita Hill, Vice Chairman

Bill Heatly, Vice Chairman for Budget and Oversight

Henry Allee

Bruce Gibson

Smith Gilley

Al Luna

Ted Lyon

Paul Moreno

Randy Pennington

Ashley Smith

NEIGHBORHOOD DISPUTE CENTERS

INTERIM CHARGE: Investigate existing neighborhood dispute centers and report on their operations

The Committee on Judicial Affairs has been particularly concerned this interim with finding ways to ease the burden on our state court system. To this end, we have sought methods by which the existing courts may work more efficiently. An increasing amount of court time has been tied up with matters that could best be handled in a non-adversary system.

The development within recent years of neighborhood dispute centers offers an alternative to traditional judicial methods of dispute resolution. Such a system promises to relieve the court system of types of litigation and conflict that may be resolved more satisfactorily in an alternate method.

Several terms have been used to identify this alternative to the court system, but "dispute mediation" is perhaps the most descriptive. Dispute mediation is defined as a method by which social conflicts are negotiated with a trained, unbiased mediator, and resolved to the mutual agreement of all parties.

Many such conflicts lend themselves to mediation. These conflicts are both civil and criminal and include bad checks, consumer problems, contract difficulties, disorderly conduct, employer-employee relations, family problems, neighborhood conflicts, vandalism, and threats.

Dispute mediation is an alternative and not a substitute for the judicial system. At anytime one or both parties to

a dispute may pursue a resolution of the problem in the courts. But just as it is an alternative to the court system, so it is an alternative to the growing conflict and frustration that these cases often breed, frustration that at times leads to violence and serious criminal consequences.

Dispute mediation can therefore ease the burden on our court system in two ways. Initially, by removing from the judicial process minor disputes that now clog our court system and, secondly, by preventing more serious crimes through early resolution of problems.

As an alternative to the delay and frustration of the judicial process, dispute mediation offers a safety valve in the community and the opportunity for greater community cohesiveness and sense of self-order.

In his book, The Litigious Society, journalist and Harvard Law School graduate Jethro Lieberman writes:

> Litigiousness is not a legal but a social phenomenon. It is born of a breakdown in community, a breakdown that exacerbates and is exacerbated by the growth of law. But until there is a consensus on fundamental principles, the trust that is essential to a self-ordering cannot be.[1]

There is little doubt that the judicial system, far from being a solution, is part of the problem. For this reason, dispute mediation offers more than just a way of cutting case loads in courts so they may devote more time in other areas where the judicial process is essential. Dispute mediation is a preferred resolution method in many situations.

[1]Jethro Lieberman, THE LITIGIOUS SOCIETY, (New York: Basic Books, 1981)

The fundamental concept of dispute mediation is nothing new. When Texas was basically a rural and small town society, justices of the peace and judges would often mediate solutions between disputing parties. Even today, in those areas that remain as small, cohesive structures this personal interest by the court system is still possible. But in the densely populated urban areas courts are prohibited from such an approach because of the anonymity of the parties and the sheer weight of the numbers involved. For these areas, dispute mediation is the alternative.

On January 28, 1982, the subcommittee held a public hearing in Dallas on the development of neighborhood dispute centers in North Texas.

Bill Hale, executive director of the Human Relations Commission in Fort Worth, explained to the members that the Commission is in the process of establishing the Dispute Mediation Service of Tarrant County. Mr. Hale enthusiastically supported dispute mediation as a preferred method of dispute resolution in many cases and as economically advantageous for local governments.

W. Richard Evarts then testified before the subcommittee on the work of the Dispute Mediation Service of Dallas County. Mr. Evarts detailed the need for a sound and continuing source of funding for "alternative systems of resolutions of disputes."

The Dispute Mediation Service of Dallas was founded on November 19, 1980, and has received financial assistance from the Meadows Foundation and the Texas Department of Community Affairs. The budget for 1981-1982 was $130,000.

Mr. Evarts testimony before the subcommittee on the need for dispute mediation in Dallas County and the operation of the service is included as Appendix I of this report.

Subsequent to the Dallas hearing, committee staff contacted Micheal L. Thompson, director, Houston Neighborhood Dispute Center.

The Houston Neighborhood Justice Center began operations in August, 1980. After a two month start up period, the Center has handled approximately 6,000 cases through February 15, 1982. Of these, 4,000 cases were resolved. Most of the other 2,000 cases were unresolved because they were poor referrals, cases that did not fit the guidelines of dispute mediation. Mr. Thompson estimated that less than five percent of cases referred to the center ever become a part of the formal judicial process.

The majority of cases that the Center mediates falls into one of three main categories: (1) domestic conflicts, (2)consumer-merchant disputes, and (3) landlord-tenant disputes.

Original funding for the Houston Neighborhood Justice Center was provided by a grant from the Law Enforcement Assistance Administration. First year funding totaled $120,000 and $60,00 is being provided for the second year. The $60,000 is being matched by donations and grants solicited from private individuals and foundations. Mr. Thompson anticipates a basic budget for next year at $250,000. He hopes to extend the Center to service a geographic area beyond Harris County into neighboring highly populous counties.

Currently, the Center has a full time paid staff of six and uses 120 volunteers on a part-time basis. Volunteers are

paid ten dollars an evening to cover personal expenses.

Additional information concerning the Houston Neighborhood Justice Center is included as Appendix II.

Other Texas cities contacted concerning dispute mediation centers include San Antonio which is in the process of planning a center, and El Paso which has shown an interest in the concept.

For dispute mediation centers to be a success they must become established as a permanent and trusted element in community life. Current financing of existing centers from state and federal grant funds and from private foundations can only be considered temporary. The uncertainty of funding threatens the continuity of the centers and hampers efforts to establish additional centers in other cities that wish to have them.

A bill to provide a source of funding was introduced during the last session of the Legislature. The bill passed the Senate but was removed from the consent calendar in the House in the closing days of the session because of some confusion as to the bill's intent.

We have reviewed this legislation and believe it will provide the funding for neighborhood dispute centers in the most equitable way. The bill is permissive and allows the commissioners courts of counties that have a population of not less than 500,000 people to collect a court cost on civil suits filed within the county, up to $4.50 per case. These funds are then to be used by the commissioners court to establish and maintain a dispute resolution system. A copy

of this legislation is included as Appendix III.

RECOMMENDATION:

The Committee recommends that legislation similar in intent to that as introduced as Senate Bill 759 in the Sixty-seventh Legislature be passed in order to provide the funding for dispute resolution centers on a county option basis. (The Legislative Budget Board did not anticipate any fiscal implication or additional cost to the State attributable to the bill introduced last session, nor do we anticipate any cost to the State with the passage of similar legislation by the Sixty-eighth Legislature.)

APPENDIX I

TESTIMONY

OF

W. RICHARD EVARTS, EXECUTIVE DIRECTOR

OF THE

DISPUTE MEDIATION SERVICE OF DALLAS, INC.

Given in public hearing before a subcommittee
of Judicial Affairs

January 28, 1982

PART I. INTRODUCTION TO TESTIMONY

Madam Chairman, Members of the Committee:

I appreciate the opportunity of appearing before you on behalf of the Dispute Mediation Service of Dallas, Inc. As Executive Director of the Dispute Mediation Service I have the pleasure of implementing a creative program design which was produced on the advice of hundreds of community leaders, and through the energy of a strong and dedicated Board of Directors. The membership on the Board of Directors is itself indicative of the kind of broad range of community support that has been enjoyed by the program since its inception. The Board includes a Dallas County Commissioner, a former mayor of the City of Dallas, a former Law School dean, the Police Chief of the City of Dallas, a nationally recognized leader in crime prevention, a representative of the Department of Justice, attorneys in private practice, and prominent social leaders.

These individuals have long recognized that many citizens of the City of Dallas agree with the Chief Justice of the United States Supreme Court who said: "The notion that most people want black robed judges, well dressed lawyers, and fine paneled court rooms as the setting to resolve their disputes is not correct. People with problems, like people with pains, want relief and they want it as quickly and inexpensively as possible." The testimony prepared for this subcommittee is based on that premise. It describes the **problem**; the **potential solution** offered by mediation; and the assistance that can be provided to the people through **legislative enactment** of a permanent funding base for such a program.

I thank you for your attention to this written record and stand ready to assist in answering any other question which you may have of me at any time in the future.

PROSPECTIVE LEGISLATION: Senate Bill 759 (House Bill HB 1988)

Senate Bill 759 authorized "County Governments in all counties of 500,000 inhabitants or more to establish alternative systems for resolution of disputes". The bill authorized such counties to collect and charge fees in all civil cases for the funding of such a system; and to administer a contract for the administration of that system. The funding would arise from a filing fee of $4.50 in each civil case. This fee would create a fund to support "alternative resolution systems".

Through some unfortunate misunderstanding, the bill was at the last moment withdrawn. An opportunity for reconsideration was afforded by a special session set by Governor Clements. Given the rush of other business it was not possible to consider the legislation in that special session.

The need for such legislation in general can be substantiated by the passage of similar legislation in the states of Florida, New York, and California. There is current consideration of such legislation in many other states including Colorado. Copies of proposed bills from other state legislatures have been included for your information. Consideration of such legislation here is of the utmost importance for many of the very same reasons that have compelled the rapid growth in mediation activities across the country and the increasing articulation of broad public support by community leaders for such a concept.

Some of the principle arguments in favor of establishing such a system include the following:

(1.) Mediation, the principal mechanism of alternative dispute system, has proved itself to be **inexpensive; accessible; participatory; non-judgmental;** and **efficient.**

(2.) **The courts are increasingly burdened with personal conflicts which cry out NOT for ajudicated settlements based in the deductive application of the law; but for solutions which address the psychological and emotional conflicts that exist between the parties.** For it is these conflicts which when unresolved tempt the parties to perpetuate the conflict. Litigants are increasingly calling upon the law at higher and higher levels to find a resolution to what is, in fact, unresolvable by the law. The tendency to litigate was first noted by Alexis D Toqueville in Democracy in America. Unfortunately it is no longer an amusing anecdote on the American character. Rather it constitutes an outrageously expensive misuse of the court system which is then faulted for not producing the results that it was never designed to produce in the first place. The emotional aspects of conflict in cases that are brought to the court are not justiciable. This misuse of the court system costs not only the parties, but the government millions of dollars in unnecessary expense.

(3.) **Since unresolved interpersonal conflict often leads to the civil filings that inordinantly burden the court, it seems only appropriate that those litigants help create a solution to the problem they created.** The $4.50 fee is a modest charge to those already undertaking thousands of dollars of legal expenses. These expenses also may take the form of repetitive calls for police assistance in civil matters; repeated attempts to convince the District Attorney's Office that a civil matter is indeed a criminal matter; and the eventual translation of what was a civil matter into a criminal

translation of what was a civil matter into a criminal matter by persistently pursuing what some people have called the national motto: "Don't get mad, get even".

(4.) The alternatives to establishing readily accessible dispute mechanisms through mediation are to create more and more courts, or to permit these unresolved conflicts to find their way to manifestations which are harmful to the larger population.

(5.) The establishment of mediation alternatives to the courts returns the responsibility and opportunity to the individual citizen for solving his or her own complaint at the lowest possible level. The parties actually participate in the solution of their own conflicts. The conflict need not be translated into abstract legal principles but can be addressed in its raw form. This opportunity may also provide reinforcement for the return to self reliance which is the only ultimate answer to overburdening the government with greater and greater requests for assistance for a broader and broader range of topics.

(6.) It is true that such mediation organizations have and can still be founded with the assistance of foundations. They can also be supported with a combination of fees for service and contracts for service. However, such structures severely limit the number of parties who can be served by the mediation alternative. Further, the long term prospect of continuing to receive funding from foundations is limited as there are competing demands for foundation assistance from a multiplicity of non-profit organizations. Shrinking foundation assets and the decline of the purchasing power of every foundation dollar also constitutes barriers to viewing them as long term funding bases. Additionally, the absence of some legislative involvement leaves the development of structure and discipline of such organizations outside the purview of legislative oversight.

I submit that these reasons compel a careful reconsideration of the concepts articulated in (Senate Bill 759) House Bill HB 1988.

PART II. THE PROBLEM IN DALLAS COUNTY

Each year hundreds of thousands of Dallas County Texas residents request, but are unable to receive, timely and affordable assistance in resolving their interpersonal disputes of a civil or criminal nature. The following facts illustrate the growing gap between the need for conflict resolution services and their provision. There were 13,860 individual calls to the office of the District Attorney in Dallas County during 1980 for which **no action to file criminal charges was possible.** Dallas Legal Aide and Dallas Legal Services turn away 5,000 requests for low or no cost legal assistance each year. During 1980 the Dallas Police Department received 1.2 million requests for assistance. Yet only 500,000 calls resulted in a dispatch of a patrol car. This level of service is provided by 2,000 police officers. The remaining 700,000 calls (1.2 million minus 500,000) represent unresolved conflict that must seek resolution somewhere.

In 1980, approximately 271,000 civil and criminal cases were addressed by all courts of every jurisdiction in Dallas County. The majority of those cases were adjudicated in the twelve Justice of the Peace Courts. Assuming that the court case load emerged from the block of conflict which could not be assisted by the police, (700,000 minus 271,000) 429,000 unresolved conflicts remain.

Where do these conflicts go? No definitive studies have ever examined the results of such conflict.

Medical and psychologically based research suggests that all conflicts are eventually "solved". Rollo May in his research on the effects of powerlessness suggests that much conflict turns into violence against any vulnerable target. This psychological tendency is well reflected in what some have described as the national motto: "Don't Get Mad, Get Even." Late night harangue, tire slashings, theft, threatening letters and more serious crimes such as murder and assault sometimes result. More frequently sullen resentment against some real or imagined "wrong" seeks expression against an innocent party. "I won't let anyone in this lane. I'll just run him off the road." "I won't put up with any guff from my (employees, employers, coworkers, wife)." "I'm mad and somebody has to pay." These attitudes have been suggested as causes of everything from the rising rates of interpersonal crime to the decrease in trust and the increase in certain kinds of self-imposed illnesses.

How can society deal with these conflicts? Psychiatry for such numbers is infeasible, if desirable, or necessary. The formal agencies for conflict settlement are not equipped to provide lasting settlements for interpersonal conflicts. **The courts are designed to deductively apply a set of legal norms to all problems WITHOUT considering the subjective, human factors.** It is not surprising, therefore, that most individual litigants emerge from court experiences embittered. (From the A.B.A. report of attitudes toward the court) They have received "justice," but they had expected some form of subjective fairness. The difference between the expectation and the reality lies in the nature of the services which the courts are is designed to provide. They are the final arbiters of all questions of law and rights, not fairness and rectitude. They are deductive in their application, and are not designed to build consensus between the parties. Such consensus, the very fabric of social interchange, is subjective and based in perceptions of equity. **Neither are the courts designed to meet out retributive punishment.** The punishments are prescribed by law, not by the sense of frustration or outrage of the "victims" or the participants. Finally, to the horror of the initiator, **the cost of proceeding often exceeds the amount at issue in cases under $5,000.** Even if the relatively new services of small claims courts are utilized, the wealthier party has a special advantage in that he may begin a new trial in the county court at considerable cost to the plaintiff who sought an inexpensive judgment. **Neither are the police empowered, in the enforcement of law, to punish the perpetrator of a civil wrong.** In short, the litigiousness described by De Toqueville in Democracy in America is costing billions of dollars, but is not producing the result expected by the client.

One especially promising answer for such conflicts is **mediation.** The definition of the process stresses the fact that mediation **provides a neutral intervener** who helps the parties regain control of their own dispute, and assists them in clarifying and codifying their future relationship. Thus, expectations between the parties are clear and written in the form of a contract enforceable according to its terms. The parties, themselves, have selected the settlement on the basis of what they believe to be fair. The process is highly **accessible,** usually mediating cases within 2 weeks of first contact and often on a 24 hour emergency basis. It is very **inexpensive,** both in terms of process and in time for the parties. It is **confidential,** in that the mediator is pledged to secrecy and no documents are released to other agencies without the specific permission of the parties already proceeding. Finally, it **addresses the emotional as well as** the so called **"substantive"** issues between the parties.

PART III. INTRODUCTION TO THE DISPUTE MEDIAITON SERVICE

"I'll just kill you!" That is what John said after giving a man $1,000 as a down payment for a used car, and upon returning much later than he had promised to pay the balance, he discovered that not only had the car been sold to someone else, but that the seller was not willing to return the deposit!

John was the first client referred to the Dallas Dispute Mediation Service (DMS) program by the Dallas District Attorney on September 30, 1981. The successful resolution of the first dispute mediated by DMS was the culmination of 18 months of planning and preparation by an 85 member planning council of Dallas residents. Under their leadership DMS was incorporated in Texas on November 19, 1980. The DMS is now a private, non-profit, tax-exempt, 501(c)(3) corporation.

The Board of Directors includes:

NAME	POSITION
Louis J. Weber, Jr. (President)	Texas Lawyer of the Year
Honorable Nancy E. Judy (Vice President)	Dallas County Commissioner
Wallace H. Savage (Vice President)	Former Mayor of Dallas
Dr. William L. Pharr (Secretary)	Executive Director National Conference of Christians and Jews
William Joyner (Treasurer)	Senior Manager Price Waterhouse & Co.
George D. Arellano	Director Employee Relations Research American Airlines
Dr. Robert Bourdene	Administrator and Psychologist, Dallas Independent School District
Judge Oswin Chrisman	44th Civil District Court
Judge B. F. (Bill) Coker	County Court of Law #1

Dr. Charles O. Galvin	Former Dean of Southern Methodist University School of Law
Robert F. Greenwald	Regional Mediator Community Relations Service, U.S. Department of Justice
M. Lawrence Hicks, Jr.	Attorney, Thompson & Knight
Chief Glen B. King	Dallas Police Department
Judge Dee Miller	254th Judicial District Court
Eric V. Moyé	Attorney, Akin, Gump, Hauer,Strauss, Feld
Lucy Polter	Former President, Dallas League of Women Voters

DMS uses mediation and conciliation to assist the parties in solving their conflicts. Mediation is defined as the intervention of a neutral, third party who, intervening at the request of the parties themselves, assists the parties in controlling the argument, determining the needs and wants of the parties, and in **establishing alternative futures from which the parties may select an acceptable solution** to their conflicts. The solution usually takes the form of a written agreement, which may be enforced according to its terms in an appropriate court. Mediation is differentiated from **arbitration** in that arbitration imposes a settlement upon the parties after they have requested the intervention of the "neutral" judge. It is differentiated from **litigation** in that in litigation the parties are represented by opposing counsel, each of whom seeks to establish a clear "victory" for his/her client. It is similar to **conciliation**, except that conciliation is generally less formal, may occur over the telephone and may not produce a written agreement.

DMS utilizes a mediator force of 40 trained community volunteers with professional backgrounds in fields such as counseling, law, labor relations, and education. This group of 40 was selected and screened from 150 applications received by DMS in the first program year. Each mediator has participated in 40 hours of mandatory training in mediation technique, as well as up to 20 hours of additional in service training.

With the first year funding from the Texas Department of Community Affairs and the Meadows Foundation of Texas, DMS is currently receiving an average of 100 referrals per month from: (1) the office of Henry Wade, the Dallas District Attorney; (2) the Information and Referral division of the local United Way Planning agency; (3) Legal Aide and Legal Service agencies; (4) other social service, media, and law enforcement agencies; and (5) local attorneys.

The types of cases referred to mediation include: domestic relations, commercial relations, inter-personal conflict, neighborhood conflicts, minor criminal matters, landlordtenant disputes, consumer affairs, employer-employee disagreements, allegations of age, sex and racial discrimination and issues of restitution.

The current success rate for cases mediated (i.e. cases resulting in a mediation session) is 95%. Success is defined as reaching a resolution acceptable to both parties.

The satisifaction of clients utilizing the mediation service even goes beyond the success rate as they evaluate the program as "very good" and write to DMS saying, "I feel getting all parties together at one time with the two mediators, is the only way this could have been resolved..."

PART V. DMS PROGRAM OBJECTIVE AND METHODS FOR 1982-83

In one year the Dispute Mediation Service of Dallas shall reduce by 1650 the number of Dallas County Texas residents which request but are unable to receive assistance in resolving their money disputes of a civil or criminal nature. This shall be evidenced in the period of one year as 1500 disputes are received by DMS involving a total of at least 3,000 individuals. Of these 3,000 individuals, it is estimated that 1050 shall agree to deal with the substantive and emotional issues of their disputes through a mediation session, and that 600 shall conciliate their disputes with the assistance of D.M.S.

A. CASE GENERATION

1. During this second year of operations, July 1, 1982 through June 30, 1983, DMS will offer its services to no fewer than 3,000 persons by addressing 1500 disputes referred by the referral sources currently developed.

2. The referrals will be distributed between the courts, police, district attorney and social service agencies.

3. In order that the level of referrals shall be maintained the Executive Director shall make annual site visits to each of the major referral sources (office of the D.A. and Information and Referral).

4. To insure that only disputes which are appropriate for mediation are accepted, each individual initiating a complaint shall be interviewed by an intake counselor determining the nature of the dispute and the respondent name and address.

5. To insure that the respondent is willing to have the dispute mediated, each respondent shall receive an appointment letter, description of the process, and a request to confirm willingness to participate.

6. To insure that mediation is accessible, the mediation session shall be scheduled for a time of day, evening or weekend convenient for the disputants.

B. DEVELOPMENT AND TRAINING OF MEDIATORS

1. To insure the continued profiency of the mediators, DMS shall provide 20 additional hours of in-service training, to be accomplished in 5 classes of 4 hours each, offered in 10 week intervals.

2. To insure that the mediator capacity will match increasing case load, an additional 40 mediators will be trained by the agency. Such load is figured by assuming each mediator capable of mediating 2 cases per month and assuming further that a 20% attrition rate is probable.

C. QUALITY CONTROL

1. To determine the factors most frequently associated with the production of an agreement, D.M.S. shall conduct a detailed statistical analysis of all cases by mediator, type of case, and the client's profile.

2. To insure that mediation provides adequate resolution of the disputes; it is requested that each client complete a satisfaction survey following the mediation session.

3. To insure that the research on mediator and case processing effectiveness is accurate and professionally done, a close collaborative plan will be drafted with the assistance of Southern Methodist University.

D. REGIONAL AND NATIONAL OUTREACH

1. DMS will arrange, plan and present a national conference on dispute mediation techniques and intake procedures to increase agency efficiency and provide the opportunity for others to do the same.

2. To insure that the national conference on mediation techniques will be self-supporting, 1000 letters will be written to potential attendees of that conference from which 250 persons will be selected. Each person will be charged $100 for the two day conference. Volunteers from local universities will also be employed in this effort and the results published under separate auspices.

3. An offer to help any other mediation center in Texas with its planning and program implementation will be given in writing to the Governor of the State of Texas. A maximum of 80 hours will be devoted to this activity.

APPENDIX II

INFORMATION CONCERNING
THE NEIGHBORHOOD JUSTICE CENTER
HOUSTON, TEXAS

HISTORY

Mediation, as a method of resolving family and neighborhood disputes before they become costly court battles or lead to violence, was introduced in the early 1970s in Columbus, Ohio. Gradually, similar programs were set up in other cities.

Hon. Frank G. Evans, chief justice of the First Court of Appeals in Houston, decided to set up a program here in 1979. With the help of a small grant from the Texas Bar Association, some members of the Houston Bar Association joined Judge Evans to start a program in Houston.

Staff members were recruited from programs in other cities and Neighborhood Justice Inc. opened in August 1980. The U.S. Department of Justice and contributions from Houston foundations provided initial funding.

With six full-time staff members, three student interns scheduling appointments at the district attorney's intake office, and more than 100 trained volunteer mediators, the Neighborhood Justice Center was able to resolve 2,386 cases in 1981.

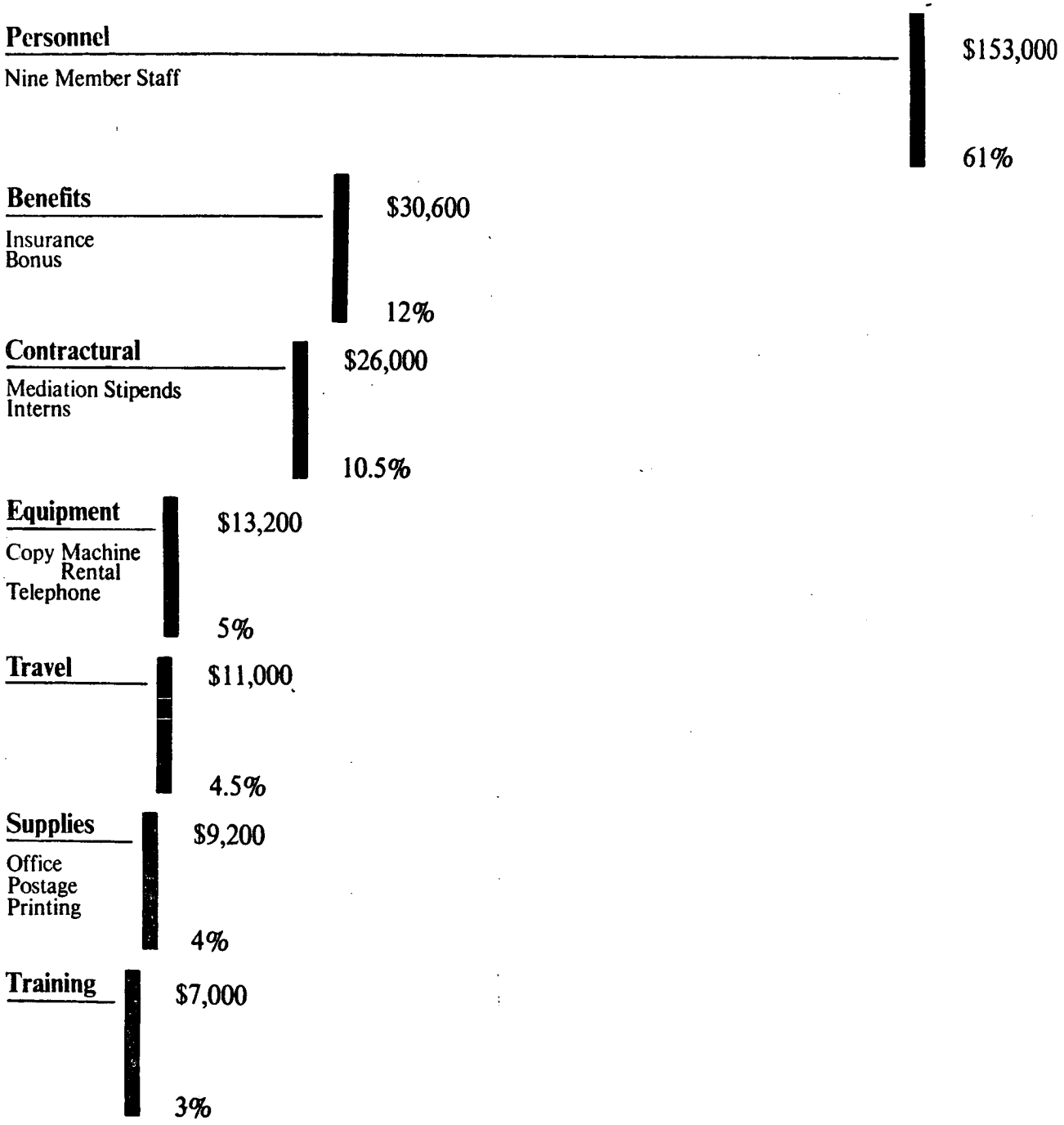
Mediation not only relieves crowded court calendars, but it also provides an outlet for conflicts that might result in violence.

Over the past year, staff members have been training high school students from the HISD magnet school on criminal justice in mediation, they work with adults in mediating issues that involve young people. To give more people access to this service, the Center plans to establish Neighborhood Justice Centers throughout the Houston area.

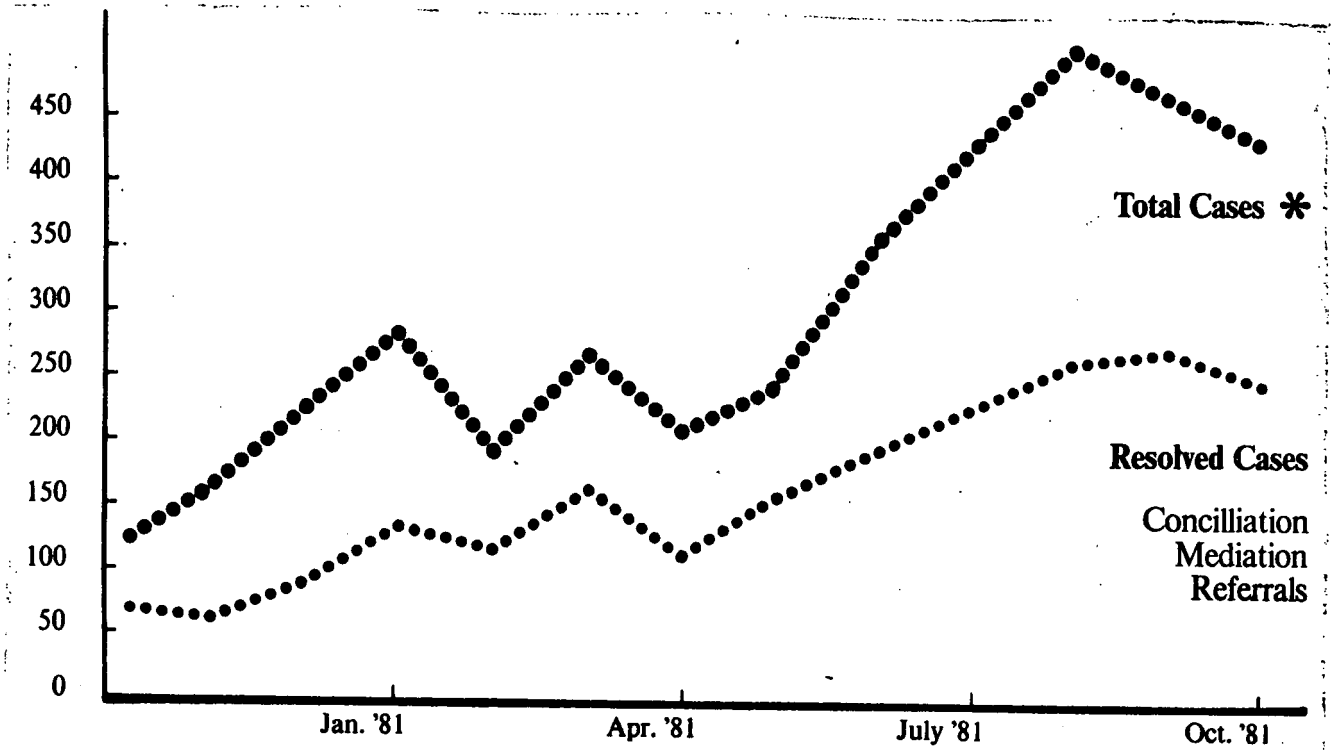
The program operates with the continued financial support of Houston businesses, individuals, and foundations.

BUDGET 1982-1983

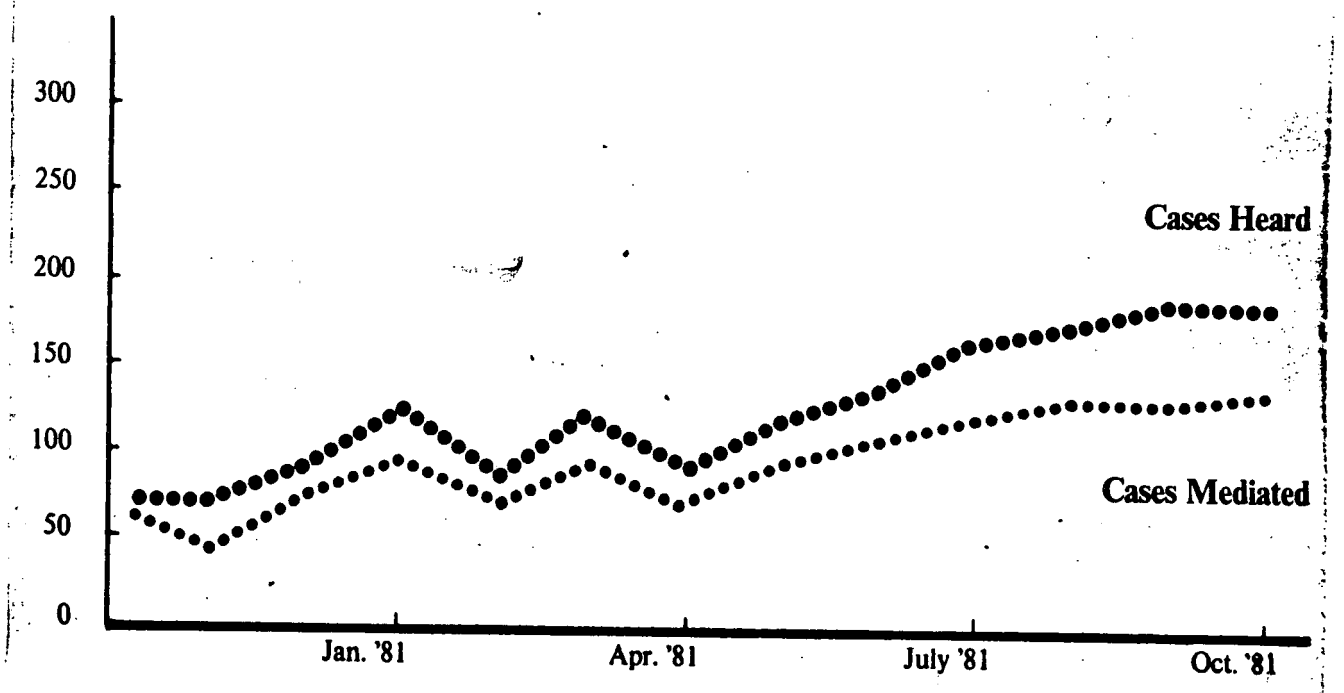
$250,000



SUCCESS RATE



* Twenty percent of total cases could not be resolved becauses parties were unreachable after initial contact.



CONTRIBUTORS

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Benjamin Franklin Savings
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Allied Endowment, Inc.
Zapata Corporation
Cameron Iron Works, Inc.
Fluor Foundation
The Prudential Foundation
Getty Oil Company
Anderson Clayton
The Law Foundation
McClelland Wallace

APPENDIX III

LEGISLATION RELATING TO THE ESTABLISHMENT OF NEIGHBORHOOD DISPUTE CENTERS

(As introduced in the 67th Legislative Session)

A BILL TO BE ENTITLED

AN ACT

relating to authorization for county governments in all counties of 500,000 inhabitants or more to establish alternative systems for resolution of disputes; to charge and collect costs in all civil cases for the administration of such system; and to administer or contract for the administration of such systems so established.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The commissioners courts of all counties within this state having a population of not less than 500,000 inhabitants according to the last preceding or any future federal census shall have the power and the authority by first entering an order for that purpose to provide for, maintain, and establish alternative systems for the peaceable and expeditious resolution of those citizen disputes that do not require formal court action.

SECTION 2. For the purpose of establishing such an alternative dispute resolution system there may be taxed, collected, and paid as other costs not to exceed $4.50 in each civil case, except suits for delinquent taxes, hereafter filed in every county or district court in said county; provided, however, that in no event shall the county be liable for said costs in any such case. Such costs shall be collected by the clerks of the respective courts in such counties and paid by said clerk to the county treasurer to be kept by said treasurer in a separate fund to be known as the "Alternative Dispute Resolution System Fund." Such fund shall be administered by said commissioners court for the implementation and maintenance of such alternative dispute

resolution system in any convenient and accessible place or places in the county, and said funds shall not be used for any other purpose.

SECTION 3. Said commissioners courts are granted all necessary power and authority to make this system effective, including the right and power to contract with any nonprofit corporation, for the purpose of the administration of any such alternative dispute resolution system established pursuant to its order and to make all reasonable rules in regard to said system in order to effectuate the terms and provisions of this Act.

SECTION 4. The effective date of this Act shall be September 1, 1981.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

SUE-THE-STATE-RESOLUTIONS

INTERIM CHARGE: Examine the current procedures used for resolutions to sue the state to determine if specific guidelines should be implemented.

Pursuant to an interim charge to the House Committee on Judicial Affairs, the committee appointed a sub-committee to "examine the current procedures used for resolutions to sue the state to determine if specific guidelines should be implemented". The members appointed to the subcommittee were the Honorable Anita Hill (Chairman), Ashley Smith (Vice-chairman), the Honorable Al Luna, the Honorable Smith Gilley, and the Honorable Buck Florence.

Resolutions granting permission to sue the state of Texas are necessary because of the doctrine of sovereign immunity, which is a common-law doctrine holding that since a government "can do no wrong", it cannot be forced to defend a suit in its own judicial systems. Sovereign immunity is an ancient concept of the common law, dating at least back to the 18th century England, although the English courts have since abondoned the idea.[1] Sovereign immunity from suit became the law in Texas in a pre-1900 Supreme Court decision and remains the law today.[2]

The doctrine is, however, subject to several exceptions. First, sovereign immunity applies only in cases which ask for monetary damages. If a government official is named in a suit seeking either an injunction or an order compelling the official to perform some official duty (i.e., a writ of mandamus), sovereign immunity does not deny the courts

jurisdiction.

The second class of exceptions are those created by the Legislature, either by statute or resolution. The principal statute waiving sovereign liability and allowing the state to be sued is the Tort Claims Act.[3] Under the Tort Claims Act, the state and all of its subdivisions, agencies, schools, etc., are responsible for damages resulting from the negligent use of motor-driven vehicles and equipment. Damages for personal injury are limited to $100,000 per person and $300,000 per accident. Damages for loss of property is limited to $10,000 per accident.

A person who has a cause of action against the state which does not come within the Tort Claims Act (for example, a suit for a breach of contract) must have a resolution passed by both the House and Senate granting him or her permission to sue the state. Seventy-seven resolutions were introduced in the 67th Session and many members have expressed the opinion that the amount of time required to hear the resolutions is excessive.

The entire problem area of sovereign immunity is not a new one. The problem was studied by both Senate and House Interim Committees in 1968 and 1969, before the 61st legislative session. The committees were composed of representatives of various interested groups, such as the Texas Association of Defense Counsel, the Texas Trial Lawyers Association and the Texas Municipal League as well as several state representatives. The committees held hearings at several locations across the state and heard testimony

from interested municipalities, county governments, lawyers and legal academicians.

The reports present the arguments for and against the doctrine in a reasonably straightforward way. [4,5] The basic argument against changing the doctrine is that this would cost the state a great deal of money. The costs of compensating a person who suffers severe physical injury can easily be over $100,000 or $1,000,000. There would also be an expense in hiring lawyers to defend against the claim. Supporters of the idea of increasing the state's liability point to these same huge losses and argue that they should be spread out through all of the state's citizens rather than falling entirely on one individual. The House committee selected the following quote to make this point:

> "*** The whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation. It is almost incredible that in this modern age of comparative sociological enlightenment, and in a republic, the medieval absolutism supposed to be implicit in the maxim, 'the king can do no wrong,' should exempt the various branches of the government from liability for their torts, and that the entire burden of damage resulting from the wrongful acts of the government should be imposed upon the single individual who suffers the injury, rather than distribute it among the entire community constituting the government, where it could be borne without hardship upon the individual and where it justly belongs."

Both committees recommended passage of the Tort Claims Act, which became law in 1970. This law has reduced the burden on the legislative process, as a large number of the claims presented before the law was passed involved automobile accidents. However, the present system of

petitioning the Legislature for permission to bring suit against the state is subject to criticism on two grounds. The first is that the Tort Claims Act arbitrarily draws a distinction between claims involving motor vehicles and other tort and contract claims. The second objection is that the number of claims left to be considered by the Legislature is still excessive.

In an effort to determine how other states deal with this problem, a survey was sent to each of the 50 states, with 22 answering. The most striking characteristic of the answers is the diversity of the approaches taken to the problem. New York, California, Louisiana, Pennsylvania, Ohio, Vermont and Washington have eliminated the need for such resolutions by either total or near-total abolishment of the doctrine of sovereign immunity.

North Dakota, South Carolina and New Mexico have no problems with sue-the-state resolutions since resolutions passed to benefit specific individuals are forbidden by their state constitutions. However, an individual can, in these three states, sue under the Tort Claims Acts passed by the respective legislatures. In Mississippi and Maine, claims bills are discouraged by the Legislatures' policy of refusing all such bills. As the respondent from Mississippi stated: "Disapproval of all such bills results in complete uniformity, however undesirable such a policy may be considered by some."

Between these opposites lies a more moderate approach: the appointment of a Board of Claims or a Judicial Master to hear claims against the state. The Board or Master operates as a trial court, making conclusions and findings of fact

before making the recommendation to the Legislature on the amount of damages, if any, which should be awarded to the claimants. Florida, Illinois, Connecticut, and New Hampshire are states following this procedure. The legislative body in each state retains the power to deny the claim.

This policy has several advantages. The most obvious advantage is to the claimant, since the legislatures have a natural tendency to defer to the recommendations of the Court of Claims or the Master and approve the appropriation to fund the claim. The second advantage is to the legislators who can now vote to award damages to individuals with the knowledge that an impartial person has examined the factual basis of the claims against the state. The legislator is able to vote to deny or grant the claim without the fear that he is denying a meritorious claim or upholding an undeserving one, and without the necessity of conducting a protracted hearing.

Connecticut and New Hampshire have an additional refinement in their claims laws which reduce the number of resolutions at a minimum of cost to the state. They allow the Court of Claims to hear and dispose of all claims below a statutory limit. In New Hampshire, the limit is $10,000. In Connecticut the limit is $5,000. Claims under these amounts are paid from money previously appropriated by the Legislature so no further legislative action is necessary.

The Committee has found that there is one change in current practices of passing sue-the-state resolutions which

would alleviate the problems in the current system to a small extent. The Judicial Affairs Committee could, at the beginning of each session, make a standing rule that all resolutions have a standard format and wording. This would have two advantages. The expense of legal fees to the claimant is reduced, since the only part of the resolution that needs to be drafted is the part setting out the facts of each particular claim. Secondly, the Committee could dispose of the claim more quickly since the only part of the resolution which would need to be considered would be the part setting out the facts. The suggested model form is included in Appendix A.

The Committee would also like to suggest that the Legislature consider increasing the amount of damages allowed under the Tort Claims Act. This act became effective in 1970. Since that time, there has been no increase in the amount of damages to offset inflation. According to the U.S. Department of Labor, the Consumer Price Index has increased by 130 percent from 1970 to 1981. (See Appendix B). In other words, $230 were required in 1981 to purchase goods selling for $100 in 1970. Considering that the Legislature heard all interested parties in 1969 and carefully considered the competing arguments before settling on damage limits of $100,000 per person and $300,000 per accident, it appears that increasing the limit would be consistent with the original legislative intent.

RECOMMENDATIONS: In order to significantly reduce the number of sue-the-state resolutions heard by the Judicial Affairs Committee, a policy change must be made. Establishing a Court of Claims to hear all claims against the state and make reports and recommendations to the Committee is one possibility. Expanding the scope of the Tort Claims Act to include additional tort and/or contract claims is another possibility. In addition, a small savings of time is possible if a standardized resolution form is adopted by the Committee.

FOOTNOTES

1. Joe R. Greenhill, Should Governmental Immunity for Torts Be Re-examined, and, If So, by Whom?, Texas Bar Journal, vol. 31, no. 11, (Dec. 22, 1968), p. 1038

2. Contran Corp. v. Bullock, (Civ. App. 1978) 567 S.W.2d 616
Gates v. City of Fort Worth, (Civ. App. 1978) 567 S.W.2d 871, writ ref'd n.r.e.

3. V.A.T.S. §6252-19

4. Report to the 61st Legislature by the Senate Interim Committee to Study Governmental Immunity, Jan. 14, 1969

5. Report of the House Interim Committee to Study Doctrine of Sovereign Immunity, Jan 13, 1969

APPENDIX A

HOUSE CONCURRENT RESOLUTION

WHEREAS, (The opening paragraphs should contain a brief statement of the facts giving rise to the claim.)

RESOLVED, By the House of Representatives of the State of Texas, the Senate concurring, that ____(name of Plaintiff_____ be and is hereby granted permission to sue the state of Texas for any relief to which it may be entitled as a result of this claim; providing, however, that all claims for interest, court costs, attorney's fees and punitive and exemplary damages shall be granted or denied in accordance with laws governing all other civil actions, and be it further

RESOLVED, That in the event suit is filed, service of citation and other required process be made on the Attorney General of the State of Texas and that the suit be tried as other civil suits; and be it further

RESOLVED, That nothing in this resolution may be construed as an admission by the State of Texas or by any of its employees, agents, departments, agencies, or political subdivisions of liability or of the truth of any allegation asserted by the claimant, but the alleged cause of action must be proved under the laws of this state as in other civil suits; and, be it further

RESOLVED, That nothing in this resolution may be construed as a waiver of any defense of law or fact available to the State of Texas or to any of its employees, agents, departments, agencies, or political subdivisions, but every defense is specifically reserved.

APPENDIX B

The Index was at 113.3 in January of 1980. In January of 1981, the Index as at 260.5. This is an increase of 130 percent.

(260.5÷ 113.3=2.36)

U.S. Department of Labor
Bureau of Labor Statistics
Washington, D.C. 20212

3/13/80

Consumer Price Index

All Urban Consumers - (CPI-U)

U.S. City Average

All items

(1967=100)

YEAR	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEP.	OCT.	NOV.	DEC.	AVG.
1949	72.0	71.2	71.4	71.5	71.4	71.5	71.0	71.2	71.5	71.1	71.2	70.8	71.4
1950	70.5	70.3	70.6	70.7	71.0	71.4	72.1	72.7	73.2	73.6	73.9	74.9	72.1
1951	76.1	77.0	77.3	77.4	77.7	77.6	77.7	77.7	78.2	78.6	79.0	79.3	77.8
1952	79.3	78.8	78.8	79.1	79.2	79.4	80.0	80.1	80.0	80.1	80.1	80.0	79.5
1953	79.8	79.4	79.6	79.7	79.9	80.2	80.4	80.6	80.7	80.9	80.6	80.5	80.1
1954	80.7	80.6	80.5	80.3	80.6	80.7	80.7	80.6	80.4	80.2	80.3	80.1	80.5
1955	80.1	80.1	80.1	80.1	80.1	80.1	80.4	80.2	80.5	80.5	80.6	80.4	80.2
1956	80.3	80.3	80.4	80.5	80.9	81.4	82.0	81.9	82.0	82.5	82.5	82.7	81.4
1957	82.8	83.1	83.3	83.6	83.8	84.3	84.7	84.8	84.9	84.9	85.2	85.2	84.3
1958	85.7	85.8	86.4	86.6	86.6	86.7	86.8	86.7	86.7	86.7	86.8	86.7	86.6
1959	86.8	86.7	86.7	86.8	86.9	87.3	87.5	87.4	87.7	88.0	88.0	88.0	87.3
1960	87.9	88.0	88.0	88.5	88.5	88.7	88.7	88.7	88.8	89.2	89.3	89.3	88.7
1961	89.3	89.3	89.3	89.3	89.3	89.4	89.8	89.7	89.9	89.9	89.9	89.9	89.6
1962	89.9	90.1	90.3	90.5	90.5	90.5	90.7	90.7	91.2	91.1	91.1	91.0	90.6
1963	91.1	91.2	91.3	91.3	91.3	91.7	92.1	92.1	92.1	92.2	92.3	92.5	91.7
1964	92.6	92.5	92.6	92.7	92.7	92.9	93.1	93.0	93.2	93.3	93.5	93.6	92.9
1965	93.6	93.6	93.7	94.0	94.2	94.7	94.8	94.6	94.8	94.9	95.1	95.4	94.5
1966	95.4	96.0	96.3	96.7	96.8	97.1	97.4	97.9	98.1	98.5	98.5	98.6	97.2
1967	98.6	98.7	98.9	99.1	99.4	99.7	100.2	100.5	100.7	101.0	101.3	101.6	100.0
1968	102.0	102.3	102.8	103.1	103.4	104.0	104.5	104.8	105.1	105.7	106.1	106.4	104.2
1969	106.7	107.1	108.0	108.7	109.0	109.7	110.2	110.7	111.2	111.6	112.2	112.9	109.8
1970	113.3	113.9	114.5	115.2	115.7	116.3	116.7	116.9	117.5	118.1	118.5	119.1	116.3
1971	119.2	119.4	119.8	120.2	120.8	121.5	121.8	122.1	122.2	122.4	122.6	123.1	121.3
1972	123.2	123.8	124.0	124.3	124.7	125.0	125.5	125.7	126.2	126.6	126.9	127.3	125.3
1973	127.7	128.6	129.8	130.7	131.5	132.4	132.7	135.1	135.5	136.6	137.6	138.5	133.1
1974	139.7	141.5	143.1	143.9	145.5	146.9	148.0	149.9	151.7	153.0	154.3	155.4	147.7
1975	156.1	157.2	157.8	158.6	159.3	160.6	162.3	162.8	163.6	164.6	165.6	166.3	161.2
1976	166.7	167.1	167.5	168.2	169.2	170.1	171.1	171.9	172.6	173.3	173.8	174.3	170.5
1977	175.3	177.1	178.2	179.6	180.6	181.8	182.6	183.3	184.0	184.5	185.4	186.1	181.5
1978	187.2	188.4	189.8	191.5	193.3	195.3	196.7	197.8	199.3	200.9	202.0	202.9	195.4
1979	204.7	207.1	209.1	211.5	214.1	216.6	218.9	221.1	223.4	225.4	227.5	229.9	217.4
1980	233.2	236.4	239.8	242.5	244.9	247.6	247.8	249.4	251.7	253.9	256.2	258.4	246.8
1981	260.5	263.2	265.1	266.8	269.0	271.3	274.4	276.5	279.3	279.9	280.7	281.5	272.4

UNIFIED COUNTY COURTS AT LAW

INTERIM CHARGE: Study the alternative of creating a unified county courts at law system.

Introduction

Improving the efficiency of the Texas court system requires the continuing effort of the legislature. The ever-present goal is to expedite justice while minimizing budget increases. During this interim, the Committee on Judicial Affairs has studied the proposal to replace the current diverse system of statutory county courts (called county courts at law) with a uniform system, as one means to improve court system efficiency. The findings and recommendations of the committee are the subject of this report.

Brief History of County Courts at Law

The first county courts at law were created by the legislature at the request of county commissioners courts in the early 1900's, primarily to assist with the caseload of the one constitutional county court in each county. As the constitutional county courts' workload in county administration increased, more new county courts at law were created by statute. In many cases, much of the constitutionally granted jurisdiction of the constitutional county courts was removed from these courts by statute, and this jurisdiction was given to the county courts at law.

With the creation of three new courts by the 67th Texas Legislature, 112 county courts at law in forty-seven counties

will exist on January 1, 1984. Dallas County has seventeen courts at law, Harris County has fourteen, Bexar County has seven, and other counties have from one to four courts each. Currently, 263 separate statutes created the county courts at law and define the jurisdiction, powers, duties, and other law relating to each. Provisions for the courts vary widely from county to county and even within some counties.

A recent survey of county court at law judges to which fifty-five judges responded showed that a few are considered to be part-time judges, expected by their county commissioners courts to supplement their part-time salary with income from the private practice of law. In most counties, the judges are considered full-time and are not allowed to practice law privately. Even among these, salaries reported in the survey varied from $19,200 to $69,100 annually.

Jurisdiction of the county courts at law also varies widely. In civil disputes a case can be heard in the court at law if the amount in controversy does not exceed a specified maximum amount, varying from as low as $5,000 maximum in some courts to $50,000 in others. Some courts at law do and others do not have jurisdiction in family law, probate matters, eminent domain causes and proceedings, and criminal misdemeanors.

During the 67th legislature, the House of Representatives passed and sent to the Senate a bill which would have unified all county courts at law under one statute. Had the bill become law, future courts at law would have been created by

amendments to this general statute. The bill provided for "uniform general jurisdiction, practices and procedures, qualifications and salaries of judges, and personnel provisions" for all present and future courts at law.[1] Special provisions for individual courts were permitted and were to be included in the portion of the statute creating each individual court. The bill also provided that for the first time the state would pay part of the cost of operating the county courts at law, paying $20,000 per court toward the judges' salaries. Also permitted by the bill were the transfer of cases and exchange of benches between county courts at law and district courts and their judges, though constitutional questions arose regarding some categories of bench exchange. The bill was defeated after debate on the Senate floor, one day before the close of the legislative session.

Arguments in Favor of Unified System

A unified statutory county court system would improve the efficiency of the state's court system, saving money while enhancing justice, proponents of the change say. They claim the uniform system would save money by using existing courts--their judges, facilities, and personnel--more efficiently, reducing the need to create new courts.

To make the statutory county courts more efficient, proponents say several key changes must be made in the system.

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1 House Bill 1013, 67th Texas Legislature, Regular Session, Section 1.02(a).

Judges' qualifications must be set uniformly high, perhaps the same as for district judges. The salary paid to the statutory county court judges should be high enough to attract highly qualified candidates and to compensate them fairly for the job. No judge should be allowed to practice law privately. Another key to improved efficiency is requiring counties to provide adequate facilities and personnel for each court. The jurisdiction of statutory county courts should be uniform throughout the state and should be greater than the current jurisdiction of most if not all of the courts. Jurisdiction should be concurrent with district, constitutional county, and justice courts in as many areas as the legislature deems reasonable to make it possible for statutory county courts to assist with the backlogs of other courts. Proponents say the existing county courts at law can handle the additional workload, particularly if the judges are given adequate facilities and personnel. Exchange of benches and transfer of cases should be permitted between statutory county courts within a county and the transfer of cases should be permitted between them and the county's district courts in matters of concurrent jurisdiction.

With these changes in the court system, supporters say the statutory county courts can reduce the need for creation of new district courts. This is especially true in some smaller counties, where the district courts currently have substantial backlogs of family law matters while the county courts at law could handle a greater caseload at no additional cost to the county or state. After start-up costs, Dallas County estimates the annual cost of a statutory county or district civil court at

around $260,000, not including state-paid salaries in a district court. While the cost varies from county to county, the saving from not creating additional district courts would be significant to any county budget.

The second major advantage of a unified statutory county court system is that it would enhance justice, proponents believe. By assisting district courts in decreasing backlogs, justice could be quicker. A uniform system would also lessen confusion for attorneys and other individuals who must file their cases in the proper court. Lack of uniform jurisdiction from county to county is particularly confusing to attorneys who practice in more than one. Uniformity should result in fewer cases being filed in the wrong court, with the resulting time delays and expenses.

Proponents feel that with a unified statutory county court system, the state should pay a portion of the operating costs of the courts, all of which is now borne by the counties. The state's contribution, they say, should be sufficient to offset increased court costs caused by legislatively mandated minimum salaries for judges and personnel. Supporters of the unified system point out that the county courts at law collect fees and are, therefore, revenue producers for the state. For each misdemeanor conviction ajudicated in a county court at law, the court collects and the county turns over to the state comptroller $5 to the Criminal Justice Planning Fund, $10 to the Compensation to Victims of Crime Fund, and $1 to the Law Enforcement Officer Standards and Education Fund. Furthermore,

if a more efficient system of statutory county courts is created, the state should realize a substantial saving due to a reduced need for additional district courts, for which the state now pays each district judge $46,800. Proponents also feel that with the increased responsibilities and workloads of county courts at law today, their judges should be looked upon as part of the statewide court system, rather than as county officeholders only.

Finally, supporters point out that any uniform system should allow for deviations from the uniform as is prudent to make the court system work better in any given county.

Arguments Against a Unified System

Those who oppose creation of a uniform statutory court system say that the courts should remain county-level courts. They point out that each county court at law has been tailor-made to suit the current needs of a particular county. Some oppose uniform jurisdiction because it presumes all or most counties have the same needs and desires. Some oppose provisions requiring the counties to do anything that will cost money, even if additional costs are offset by appropriations from the state. This includes paying judges not less than a legally set minimum salary and providing specific facilities and personnel. A uniform system, they say, simply will not serve the individual needs of the counties as well as the current system of diversity.

Others object to the cost to the state of paying part of the judges' salaries. If the state paid the counties $20,000 per court annually, as proposed in last session's failed legislation, the cost to the state would be $2.24 million per year for the existing 112 courts. Opponents of this provision say that the counties should continue to pay all costs of statutory county courts, as they have historically agreed to do when requesting the courts be created by the legislature. Opposition also comes from counties having no statutory county court. They object to helping to pay for courts other counties requested and from which they receive no benefit.

Subcommittee Hearings

A subcommittee to study the alternative of creating a uniform county court at law system was appointed by Committee on Judicial Affairs Chairman Buck Florence. The subcommittee was chaired by Representative Anita Hill, with Representative Ashley Smith serving as Vice Chairman. Other members were Representatives Al Luna, Smith Gilley, and Buck Florence.

A subcommittee hearing was held in Dallas on January 28, 1982, and all members were in attendance. Testimony concerned the need for substantive changes in jurisdiction for the county courts at law. There was general agreement among all the witnesses that appeared that some changes are needed. While there was some variation in the details, all witnesses expressed the hope and belief that an acceptable solution could be found and that such a solution would improve the justice system in the counties they represented.

The witnesses that were present and testified at this hearing were the following:

Walter Wiebusch, attorney, Harris County Criminal Courts at Law, Houston

Bob Wessels, court manager, Harris County Criminal Courts at Law, Houston

Clarence Guittard, Judge, Fifth Court of Appeals, Dallas

J.S. Freels, Jr., Judge, County Court at Law, Grayson County, Sherman

Michael D. Schattman, Judge, County Court at Law No. 2, Tarrant County, Fort Worth

Robert E. Day, Judge, County Court at Law No. 4, Dallas County, Dallas

Harold Entz, Judge, County Criminal Court No. 4, Dallas County, Dallas

Phil Fugitt, Judge, County Court at Law, Hunt County, Greenville

Tom Fuller, Judge, County Criminal Court of Appeals No. 2, Dallas County, Dallas

In addition to the hearing, subcommittee members were provided with an informal survey of current county court at law judges. The survey asked questions concerning current salary, jurisdiction, and other provisions relating to the individual courts. It also asked what changes in the law regarding county courts at law that these judges feel are needed. A summary of the responses is included in Appendix A.

The subcommittee chairman also met informally with representatives of the county court at law judges, including them in discussions that led to development of proposed legislation.

Subcommittee Findings

The subcommittee found that general agreement exists among current county court at law judges that a uniform statutory county court system should be created. They generally agree that such a system should include uniform jurisdiction, powers, terms, practices and procedures, qualifications of judges, minimum salaries of judges, personnel, and other features necessary to uniformity. Substantial support is given to changing the names of the courts from "county courts at law" to "circuit courts," to lessen the confusion of constitutional and statutory county courts and to signal the substantial change in the statutory court system.

Representatives of the county court at law judges and the subcommittee agreed upon a number of provisions they feel a uniform statutory court law should contain. These include:

1. Jurisdiction

Statutory county courts should have jurisdiction concurrent with the district court in civil cases in which the matter in controversy is from $500 to $50,000, in all worker's compensation cases, in eminent domain cases and proceedings, and in family law matters. They also favor jurisdiction concurrent with the constitutional county court in all civil and criminal cases prescribed by law for county courts and probate matters where no statutory probate court exists in the county. They want jurisdiction concurrent with district and county courts in all civil matters.

2. Qualifications of judges

A statutory county court judge should have practiced law in the state for at least four years and have resided in the county for at least one year.

3. Salary of judges

All judges should be paid a sum that is at least equal to the amount that is $1,000 less than the total annual salary, in supplements, received by district judges in the same county.

4. No private practice of law

All statutory county court judges should serve full time and should not be allowed to practice law privately.

5. Personnel and facilities

Each court should have a qualified court reporter, and the law should permit counties to hire court coordinators or administrative assistants. Counties should be required to

provide physical facilities and necessary personnel, such as bailiffs, to operate the courts.

6. Transfer of cases and exchange of benches

   Provisions should be made for the transfer of cases and exchange of benches between the various courts within a county.

7. Compensation to counties

   Counties should be paid annually by the state $20,000 for each statutory county court. However, no money should be paid to counties that have special provisions allowing the county commissioners courts to set their judges' salaries at other than the minimum amount specified in the uniform statute.

8. Special provisions

   Special provisions to allow for unusual needs or wishes of individual counties should be allowed.

The subcommittee also found a need for a change in the way special judges are selected if the regular judge is unable to preside in a case for any reason. Current law provides for the lawyers of the county to meet on the courthouse steps to elect a special judge for the case. The subcommittee recommends that a provision be included in any uniform statutory court legislation to allow the presiding judge of the administrative judicial district to appoint a retired district judge or a lawyer to sit as a special judge.

Recommendation

The committee recommends that legislation creating a uniform statutory court system, such as the draft found in Appendix B, be considered by the 68th Texas Legislature. The committee also recommends that the findings of the subcommittee be used as the basis for any such legislation that is introduced.

APPENDIX A

RESULTS OF SURVEY OF

COUNTY COURT AT LAW JUDGES

SURVEY RESULTS

Responses received: 55 out of 108 sent (3 said they spoke for the other judge in the county)

Question:

1 & 2 Asked for name of judge and court

3. Judge's age

Average age: 48.9 years Range of ages: 32 to 79 years

Age Category	Number of Judges
30 - 39	15
40 - 49	16
50 - 59	12
60 - 69	9
70 - 79	3

4. Length of service (all or most included only service as county court at law judge)

Average length of service: 5.9 years

Length of Service Categories	Number of Judges
0 - 5 years	33
5 - 10 years	15
10 - 15 years	4
15 - 20 years	1
20 - 25 years	2

5. Jurisdiction of court (excercised jurisdiction)

Civil jurisdiction -	
up to $5,000 :	19
up to $10,000:	9
up to $20,000:	11
up to $50,000:	2
Criminal misdemeanors:	46
Probate:	27
Juvenile:	24
Eminent domain/condemnation:	17
Family law:	12

Survey Results - Page Two

5. Jurisdiction continued:
   Mental health/commitment: 11
   Civil and/or criminal appeals from municipal and justice courts: 9
   All jurisdiction of county court: 2
   No jurisdiction listed: 1

6. Serve full-time or part-time? Is private law practice allowed?

   Full-time, private practice not allowed: 51

   Full-time, private practice allowed: 3 (none do practice)

   Part-time, private practice allowed: 1 (does not practice)

7. Base salary

Salary range	Number of courts
$19,200-$22,400	3
$29,000-$35,000	10
over $35,000-$40,000	11
over $40,000-$45,000	5
over $45,000-$50,000	2
over $50,000-$55,000	3
over $55,000-$60,000	3
over $60,000-$65,000	9 (all Dallas County)
over $65,000-$69,100	7 (all Harris County)

8. Receive judicial supplement

   No or no answer: 43

   Yes: 12 Average supplement: $4,412 Range: $1,500-$11,020

   Supplement provided for service on juvenile board/as juvenile judge: 12
   For mileage: 1

9. Full-time court reporter

   Yes: 44
   No: 11

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10. Requests for legislature in 1983 (and number of judges making request)

Pass legislation similar to HB 1013, uniform court at law legislation from 67th session	(15)
Increase salary through state law	(7)
Allow court at law judges to join Judicial Retirement System	(6)
Increase civil jurisdiction	(4)
Uniform jurisdiction throughout state	(4)
Exchange of benches	(4)
Increases in jurisdiction other than civil	(3)
Right to hire own staff/additional staff mandated by state law	(3)
Do not reduce any court's jurisdiction in creating uniform system	(3)

Requests from only one or two judges:

- Elevation to status of district court judge
- State reimbursement of counties for part of court at law expenses
- Inclusion of all court at law judges hearing juvenile cases on county juvenile board
- Change name of courts to circuit courts
- Limit right of appeal from municipal and justice courts to "not guilty" pleas
- Six person juries for all cases
- Discretionary funds from court costs
- Status as "state" judge during retirement

APPENDIX B

DRAFT LEGISLATION CREATING A UNIFORM STATUTORY COURT SYSTEM

By_____ ____B. No._____

A BILL TO BE ENTITLED

AN ACT

relating to a Uniform Statutory Court Act, the change of name of certain courts, and financing of statutory county courts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. This Act may be cited as the Uniform Statutory Court Act.

SECTION 1.02. SCOPE OF ACT. (a) Subchapter B changes the name of each existing county court at law to a circuit court. All constitutional and statutory references to county courts at law mean circuit courts, and all laws and rules applicable to county courts at law are applicable to circuit courts.

(b) Except as otherwise provided by this Act, Subchapter A provides uniform jurisdiction, powers, terms, practices and procedures, qualifications and salaries of judges, personnel, and other provisions throughout the state for all circuit courts.

(c) Additional courts may be created by amending Subchapter C of this Act without repeating the general provisions of Subchapter A.

(d) This Act does not apply to statutory probate courts which, for purposes of this Act, are defined by Section 3, Texas Probate Code.

SECTION 1.03. JURISDICTION. (a) A circuit court has concurrent civil jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(2) appeals of final rulings and decisions of the Industrial Accident Board;

(3) eminent domain cases and proceedings; and

(4) cases and proceedings involving adoptions, birth records, or removal of disability of minority or coverture; change of names of persons; child welfare, custody, support and reciprocal support, dependency, neglect, or delinquency; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support and custody of minors and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses.

(b) A circuit court has concurrent jurisdiction with the county court in:

(1) all civil and criminal cases and proceedings, original and appellate, prescribed by law for county courts; and

(2) probate matters and proceedings in a county that does not have a statutory probate court.

(c) A circuit court has concurrent jurisdiction with the county and district court in juvenile matters and proceedings as provided by Chapter 178, Acts of the 66th Legislature, Regular Session, 1979 (Article 2338-1.1, Vernon's Texas Civil Statutes).

(d) A circuit court has concurrent jurisdiction with the

justice court in all civil and criminal matters for which jurisdiction is conferred on justice courts by the general laws of this state. An appeal or writ of error may not be taken to the court of appeals from a final judgment of a circuit court in civil cases of which the court has appellate or original concurrent jurisdiction with the justice court if the judgment or amount in controversy does not exceed $100, excluding interest and costs, and the appeal or writ of error shall be as prescribed by the law relating to county courts. This section does not deny the right of appeal to a circuit court from the justice court where the right of appeal to the county court exists by law.

(e) A circuit court does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business that is within the jurisdiction of the commissioners court. The judge of the county court retains and shall exercise all ex officio duties of the county judge.

(f) This section does not diminish the jurisdiction of the district courts and justice courts but only gives concurrent jurisdiction to the circuit courts over the matters specified in Subsections (a)-(d). The district courts and justice courts retain and shall continue to exercise the jurisdiction conferred by law on those courts.

(g) Article 1951, Revised Statutes, does not apply to a circuit court and does not affect or diminish the jurisdiction of the circuit court.

SECTION 1.04. POWERS AND DUTIES. (a) A circuit court or

its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county.

(b) A circuit court or its judge may punish for contempt as prescribed by general law.

(c) The judge of a circuit court has all other powers, duties, immunities, and privileges provided by law for county court judges, except that a judge of a circuit court does not have any authority over the administrative business of the county that is performed by the county judge of the county.

SECTION 1.05. TERMS OF COURT. The terms of a circuit court begin on the first Monday in January and the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

SECTION 1.06. JUDGES. (a) A judge of a circuit court must be a citizen of the United States, must have resided in the county in which the court is located for at least one year prior to his election or appointment, and must be a licensed member of the state bar who has actively practiced law for at least four years prior to his election or appointment. The requirement that the person must have actively practiced law for four years does not apply to a person serving as judge of a statutory county court on the date that the court is renamed by this Act.

(b) Unless otherwise provided by this Act, the commissioners

court of each county shall fix the annual salary of each judge of a circuit court at a sum that is at least equal to the amount that is $1,000 less than the total annual salary, including supplements, received by the judges of the district courts in that county. The annual salary shall be paid in equal monthly installments.

(c) The commissioners court shall appoint a person to fill a vacancy in the office of the judge of a circuit court. The appointee holds office until the next succeeding general election and until his successor is elected and qualified.

(d) At the general election in 1986 and every fourth year thereafter, the qualified voters of the county shall elect the judges of the circuit courts for regular terms of four years as provided by Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(e) The judge of a circuit court shall take the oath of office prescribed by the constitution of this state, but a bond is not required of a circuit court judge.

(f) The judge of a circuit court may not engage in the private practice of law.

SECTION 1.07. COURT OFFICIALS, PERSONNEL, AND FACILITIES. (a) The judge of each circuit court shall appoint an official court reporter. The court reporter must have the qualifications prescribed by law for that office and is entitled to the same compensation, fees, and allowances as the reporters of the district courts in that county.

(b) With the approval of the commissioners court, the judge of each circuit court may appoint a court coordinator or

administrative assistant for his court. A court coordinator or administrative assistant performs the duties prescribed by the judge of his court and cooperates with the administrative judges and state agencies for the uniform and efficient operation of the courts and the administration of justice. The court coordinator or administrative assistant is entitled to be paid from county funds the compensation, fees, and allowances that are set by the commissioners court or as otherwise provided by law. This section is cumulative of the provisions of the law that relate to a court administrator's system for county courts with criminal jurisdiction in certain counties and a court manager, coordinator system, and presiding judge for certain courts in counties with a population in excess of 2,000,000.

(c) The criminal district attorney or county attorney and the sheriff of the county shall attend each circuit court as required by the judge of the court. The county clerk serves as clerk of the circuit court except that, in matters within the concurrent jurisdiction of the circuit court and the district court, the district clerk serves as clerk of the court.

(d) The commissioners court shall provide the physical facilities and the deputy clerks, bailiffs, and other personnel necessary to operate the circuit courts in each county.

SECTION 1.08. SPECIAL JUDGE. (a) If the regular judge of a circuit court is absent or is from any cause disabled or disqualified from presiding, the presiding judge of the administrative judicial district in which the county is located may appoint a retired district judge or a lawyer to sit as a special

judge.

(b) To be eligible for appointment as a special judge, a lawyer must reside in the county and meet the qualifications required of the regular judge, and a retired judge must reside in the administrative judicial district and have voluntarily retired from office and certified his willingness to serve.

(c) A special judge shall take the oath of office that is required by law for the regular judge and has all the power and jurisdiction of the court and of the regular judge for whom he is sitting. A special judge may sign orders, judgments, decrees, or other process of any kind as "Judge Presiding" when acting for the regular judge.

(d) A special judge is entitled to receive for the services actually performed the same amount of compensation that the regular judge is entitled to receive for the services. The compensation shall be paid out of county funds on certification by the presiding judge of the administrative judicial district that the special judge has rendered the services and is entitled to receive the compensation. None of the amount paid to a special judge for sitting for the regular judge may be deducted or paid out of the salary of the regular judge.

(e) This section is cumulative of the law relating to the appointment of a special judge by the presiding judge for certain circuit courts with criminal jurisdiction in counties with a population in excess of 2,000,000.

SECTION 1.09. TRANSFER OF CASES; EXCHANGE OF BENCHES. (a) The judge of the county court and the judges of the circuit courts

in a county may transfer cases to and from the dockets of their respective courts, except that a case may not be transferred from one court to another without the consent of the judge of the court to which it is transferred and may not be transferred unless it is within the jurisdiction of the court to which it is transferred. The county judge and the judges of the circuit courts in a county may exchange benches and courtrooms with each other so that if one is absent, disabled, or disqualified, the other may hold court for him without the necessity of transferring the case. Either judge may hear all or any part of a case pending in the county court or a circuit court and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. A judge may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(b) On motion of a party, on agreement of the parties, or on their own motion, the judges of the circuit courts and district courts in a county may transfer civil cases and proceedings to and from the dockets of their respective courts, except that a case or proceeding may not be transferred from one court to another without the consent of the judge of the court to which it is transferred and may not be transferred unless it is within the jurisdiction of the court to which it is transferred. If a judge is disqualified in a case or proceeding, he shall transfer the case or proceeding from his court to one of the other courts.

(c) When a case is transferred from one court to another as

provided by this section, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court. The obligees in all bonds and recognizances taken in and for a court from which a case is transferred, and all witnesses summoned to appear in a court from which a case is transferred, are required to appear before the court to which the case is transferred as if originally issued out of the court to which the transfer is made.

SECTION 1.10. JURIES; PRACTICE AND PROCEDURE. (a) The drawing of jury panels, selection of jurors, and practice in the circuit courts shall conform to that prescribed by general law for county courts, except that practice, procedure, rules of evidence, issuance of process and writs, juries, and all other matters pertaining to the conduct of trials and hearings in the circuit courts involving those matters of concurrent jurisdiction with district courts shall be governed by the laws and rules pertaining to district courts.

(b) The judges of the circuit courts in a county may adopt the rules governing the filing and numbering of cases, the assignment of cases for trial, and the distribution of the work of the circuit courts that they consider necessary or desirable for the orderly dispatch of the business of those courts.

(c) In matters within their concurrent jurisdiction, the judges of the circuit courts and district courts in a county shall adopt the rules governing the filing and numbering of cases, the assignment of cases for trial, and the distribution of the work of

those courts that they consider necessary or desirable for the orderly dispatch of the business of those courts. The rules must receive an affirmative vote of a majority of the judges of the district courts and a majority of the judges of the circuit courts in the county. If it is numerically impossible to obtain a majority of either or both the district court judges or the circuit court judges, the vote of the district judge with the greatest number of years of service is deemed to be the vote constituting a majority for the purpose of compliance with this subsection.

SECTION 1.11. SEAL. The seal of the courts that are renamed or created by this Act is the same as that provided by law for county courts, except that the seal shall contain the name of the circuit court as it appears in this Act.

SECTION 1.12. COMPENSATION TO COUNTIES. (a) Except as provided by Subsection (b) of this section, the state shall annually compensate each county in an amount equal to $20,000 for each circuit court in the county on the first day of the state's fiscal year. That amount shall be paid to the salary fund of the county in equal monthly installments from funds appropriated from the general revenue fund.

(b) If, under Subchapter B of this Act, a county is permitted to pay a circuit court judge a salary that does not comply with Section 1.06(b) of this Act, that county shall receive none of the reimbursement from the state authorized by this section.

SUBCHAPTER B. CHANGE OF NAME AND SPECIAL PROVISIONS FOR CERTAIN COURTS

SECTION 2.001. The name of the County Court at Law of Anderson County is changed to the Circuit Court No. 1 of Anderson County.

SECTION 2.002. The name of the County Court at Law of Angelina County is changed to the Circuit Court No. 1 of Angelina County.

SECTION 2.003. The name of the County Court at Law No. 1 of Bell County is changed to the Circuit Court No. 1 of Bell County.

SECTION 2.004. The name of the County Court at Law No. 2 of Bell County is changed to the Circuit Court No. 2 of Bell County.

SECTION 2.005. (a) The name of the County Court at Law No. 1 of Bexar County is changed to the Circuit Court No. 1 of Bexar County.

(b) The Circuit Court No. 1 of Bexar County shall give preference to probate matters and proceedings.

(c) The judge of the Circuit Court No. 1 of Bexar County may appoint an administrative assistant or assistants to aid him in the performance of his duties in probate matters. The salary of the administrative assistant or assistants shall be set by the commissioners court and paid out of the general fund of the county by warrants drawn by the county treasurer, or his successor, on orders of the commissioners court.

SECTION 2.006. The name of the County Court at Law No. 2 of Bexar County is changed to the Circuit Court No. 2 of Bexar County.

SECTION 2.007. The name of the County Court at Law No. 3 of Bexar County is changed to the Circuit Court No. 3 of Bexar County.

SECTION 2.008. The name of the County Court at Law No. 4 of

Bexar County is changed to the Circuit Court No. 4 of Bexar County.

SECTION 2.009. The name of the County Court at Law No. 5 of Bexar County is changed to the Circuit Court No. 5 of Bexar County.

SECTION 2.010. (a) The name of the County Court at Law No. 6 of Bexar County is changed to the Circuit Court No. 6 of Bexar County.

(b) The Circuit Court No. 6 of Bexar County shall give preference to probate matters and proceedings.

(c) The judge of the Circuit Court No. 6 of Bexar County may appoint an administrative assistant or assistants to aid him in the performance of his duties in probate matters. The salary of the administrative assistant or assistants shall be set by the commissioners court and paid out of the general fund of the county by warrants drawn by the county treasurer, or his successor, on orders of the commissioners court.

SECTION 2.011. The name of the County Court at Law No. 1 of Brazoria County is changed to the Circuit Court No. 1 of Brazoria County.

SECTION 2.012. The name of the County Court at Law No. 2 of Brazoria County is changed to the Circuit Court No. 2 of Brazoria County.

SECTION 2.013. The name of the County Court at Law of Brazos County is changed to the Circuit Court No. 1 of Brazos County.

SECTION 2.014. The name of the County Court at Law of Cameron County is changed to the Circuit Court No. 1 of Cameron County.

SECTION 2.015. The name of the County Court at Law No. 2 of

Cameron County is changed to the Circuit Court No. 2 of Cameron County.

SECTION 2.016. The name of the County Court at Law of Collin County is changed to the Circuit Court No. 1 of Collin County.

SECTION 2.017. The name of the County Court at Law No. 2 of Collin County is changed to the Circuit Court No. 2 of Collin County.

SECTION 2.018. The name of the County Court at Law of Comal County is changed to the Circuit Court No. 1 of Comal County.

SECTION 2.019. The name of the County Court of Dallas County at Law No. 1 is changed to the Circuit Court No. 1 of Dallas County.

SECTION 2.020. The name of the County Court of Dallas County at Law No. 2 is changed to the Circuit Court No. 2 of Dallas County.

SECTION 2.021. The name of the County Court of Dallas County at Law No. 3 is changed to the Circuit Court No. 3 of Dallas County.

SECTION 2.022. The name of the County Court of Dallas County at Law No. 4 is changed to the Circuit Court No. 4 of Dallas County.

SECTION 2.023. The name of the County Court of Dallas County at Law No. 5 is changed to the Circuit Court No. 5 of Dallas County.

SECTION 2.024. (a) The name of the County Criminal Court of Dallas County is changed to the Circuit Court No. 6 of Dallas County.

(b) The Circuit Court No. 6 of Dallas County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.025. (a) The name of the County Criminal Court No. 2 of Dallas County is changed to the Circuit Court No. 7 of Dallas County.

(b) The Circuit Court No. 7 of Dallas County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.026. (a) The name of the County Criminal Court No. 3 of Dallas County is changed to the Circuit Court No. 8 of Dallas County.

(b) The Circuit Court No. 8 of Dallas County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.027. (a) The name of the County Criminal Court No. 4 of Dallas County is changed to the Circuit Court No. 9 of Dallas County.

(b) The Circuit Court No. 9 of Dallas County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.028. (a) The name of the County Criminal Court No. 5 of Dallas County is changed to the Circuit Court No. 10 of Dallas County.

(b) The Circuit Court No. 10 of Dallas County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.029. (a) The name of the County Criminal Court No. 6 of Dallas County is changed to the Circuit Court No. 11 of Dallas County.

(b) The Circuit Court No. 11 of Dallas County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.030. (a) The name of the County Criminal Court No. 7 of Dallas County is changed to the Circuit Court No. 12 of Dallas County.

(b) The Circuit Court No. 12 of Dallas County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.031. (a) The name of the County Criminal Court No. 8 of Dallas County is changed to the Circuit Court No. 13 of Dallas County.

(b) The Circuit Court No. 13 of Dallas County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.032. (a) The name of the County Criminal Court No. 9 of Dallas County is changed to the Circuit Court No. 14 of Dallas County.

(b) The Circuit Court No. 14 of Dallas County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.033. (a) The name of the County Criminal Court No. 10 of Dallas County is changed to the Circuit Court No. 15 of Dallas County.

(b) The Circuit Court No. 15 of Dallas County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.034. (a) The name of the Dallas County Criminal Court of Appeals is changed to the Circuit Court No. 16 of Dallas County.

(b) The Circuit Court No. 16 of Dallas County shall give preference to criminal misdemeanor cases appealed from justice of the peace and municipal courts. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.035. (a) The name of the Dallas County Criminal Court of Appeals No. 2 is changed to the Circuit Court No. 17 of Dallas County.

(b) The Circuit Court No. 17 of Dallas County shall give preference to criminal misdemeanor cases appealed from justice of the peace and municipal courts. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.036. The name of the County Court at Law of Denton County is changed to the Circuit Court No. 1 of Denton County.

SECTION 2.037. The name of the County Court at Law No. 2 of Denton County is changed to the Circuit Court No. 2 of Denton County.

SECTION 2.038. The name of the County Court at Law of Ector County is changed to the Circuit Court No. 1 of Ector County.

SECTION 2.039. The name of the County Court at Law No. 1 of El Paso County is changed to the Circuit Court No. 1 of El Paso County.

SECTION 2.040. The name of the County Court at Law No. 2 of El Paso County is changed to the Circuit Court No. 2 of El Paso County.

SECTION 2.041. The name of the County Court at Law No. 3 of El Paso County is changed to the Circuit Court No. 3 of El Paso County.

SECTION 2.042. The name of the County Court at Law No. 4 of El Paso County is changed to the Circuit Court No. 4 of El Paso County.

SECTION 2.043. The name of the County Court at Law No. 5 of El Paso County is changed to the Circuit Court No. 5 of El Paso County.

SECTION 2.044. The name of the County Court at Law of Fort Bend County is changed to the Circuit Court No. 1 of Fort Bend County.

SECTION 2.045. The name of the County Court at Law No. 1 of Galveston County is changed to the Circuit Court No. 1 of Galveston County.

SECTION 2.046. The name of the County Court at Law No. 2 of Galveston County is changed to the Circuit Court No. 2 of Galveston County.

SECTION 2.047. The name of the County Court at Law of Grayson County is changed to the Circuit Court No. 1 of Grayson County.

SECTION 2.048. The name of the County Court at Law No. 2 of Grayson County is changed to the Circuit Court No. 2 of Grayson County.

SECTION 2.049. The name of the County Court at Law of Gregg County is changed to the Circuit Court No. 1 of Gregg County.

SECTION 2.050. The name of the County Court at Law of Guadalupe County is changed to the Circuit Court No. 1 of Guadalupe County.

SECTION 2.051. (a) The name of the County Civil Court at Law No. 1 of Harris County, Texas, is changed to the Circuit Court No. 1 of Harris County.

(b) The Circuit Court No. 1 of Harris County shall give preference to civil cases in which the amount in controversy is not more than $5,000, excluding interest.

SECTION 2.052. (a) The name of the County Civil Court at Law No. 2 of Harris County, Texas, is changed to the Circuit Court No. 2 of Harris County.

(b) The Circuit Court No. 2 of Harris County shall give preference to civil cases in which the amount in controversy is not more than $5,000, excluding interest.

SECTION 2.053. (a) The name of the County Civil Court at Law No. 3 of Harris County, Texas, is changed to the Circuit Court No. 3 of Harris County.

(b) The Circuit Court No. 3 of Harris County shall give preference to civil cases in which the amount in controversy is not more than $5,000, excluding interest.

SECTION 2.054. (a) The name of the County Civil Court at Law No. 4 of Harris County, Texas, is changed to the Circuit Court No. 4 of Harris County.

(b) The Circuit Court No. 4 of Harris County shall give

preference to civil cases in which the amount in controversy is not more than $5,000, excluding interest.

SECTION 2.055. (a) The name of the County Criminal Court at Law No. 1 of Harris County, Texas, is changed to the Circuit Court No. 5 of Harris County.

(b) The Circuit Court No. 5 of Harris County shall give preference to criminal cases. It does not have jurisdiction of eminent domain cases and proceedings.

(c) The terms of the Circuit Court No. 5 of Harris County begin on the first Monday of the months of June, August, October, December, February, and April of each year. Each term continues until the business of the court is disposed of.

(d) The district clerk of Harris County is the clerk of the Circuit Court No. 5 of Harris County and shall receive and collect the fees provided by law in criminal matters.

(e) The sheriffs and constables of this state executing process issued out of the Circuit Court No. 5 of Harris County shall receive the fees fixed by law for executing criminal process.

SECTION 2.056. (a) The name of the County Criminal Court at Law No. 2 of Harris County, Texas, is changed to the Circuit Court No. 6 of Harris County.

(b) The Circuit Court No. 6 of Harris County shall give preference to criminal cases. It does not have jurisdiction of eminent domain cases and proceedings.

(c) The terms of the Circuit Court No. 6 of Harris County begin on the first Monday of the months of June, August, October, December, February, and April of each year. Each term continues

until the business of the court is disposed of.

(d) The district clerk of Harris County is the clerk of the Circuit Court No. 6 of Harris County and shall receive and collect the fees provided by law in criminal matters.

(e) The sheriffs and constables of this state executing process issued out of the Circuit Court No. 6 of Harris County shall receive the fees fixed by law for executing criminal process.

SECTION 2.057. (a) The name of the County Criminal Court at Law No. 3 of Harris County, Texas, is changed to the Circuit Court No. 7 of Harris County.

(b) The Circuit Court No. 7 of Harris County shall give preference to criminal cases. It does not have jurisdiction of eminent domain cases and proceedings.

(c) The terms of the Circuit Court No. 7 of Harris County begin on the first Monday of the months of June, August, October, December, February, and April of each year. Each term continues until the business of the court is disposed of.

(d) The district clerk of Harris County is the clerk of the Circuit Court No. 7 of Harris County and shall receive and collect the fees provided by law in criminal matters.

(e) The sheriffs and constables of this state executing process issued out of the Circuit Court No.7 of Harris County shall receive the fees fixed by law for executing criminal process.

SECTION 2.058. (a) The name of the County Criminal Court at Law No. 4 of Harris County, Texas, is changed to the Circuit Court No. 8 of Harris County.

(b) The Circuit Court No. 8 of Harris County shall give

preference to criminal cases. It does not have jurisdiction of eminent domain cases and proceedings.

(c) The terms of the Circuit Court No. 8 of Harris County begin on the first Monday of the months of June, August, October, December, February, and April of each year. Each term continues until the business of the court is disposed of.

(d) The district clerk of Harris County is the clerk of the Circuit Court No. 8 of Harris County and shall receive and collect the fees provided by law in criminal matters.

(e) The sheriffs and constables of this state executing process issued out of the Circuit Court No. 8 of Harris County shall receive the fees fixed by law for executing criminal process.

SECTION 2.059. (a) The name of the County Criminal Court at Law No. 5 of Harris County, Texas, is changed to the Circuit Court No. 9 of Harris County.

(b) The Circuit Court No. 9 of Harris County shall give preference to criminal cases. It does not have jurisdiction of eminent domain cases and proceedings.

(c) The terms of the Circuit Court No. 9 of Harris County begin on the first Monday of the months of June, August, October, December, February, and April of each year. Each term continues until the business of the court is disposed of.

(d) The district clerk of Harris County is the clerk of the Circuit Court No. 9 of Harris County and shall receive and collect the fees provided by law in criminal matters.

(e) The sheriffs and constables of this state executing process issued out of the Circuit Court No. 9 of Harris County

shall receive the fees fixed by law for executing criminal process.

SECTION 2.060. (a) The name of the County Criminal Court at Law No. 6 of Harris County, Texas, is changed to the Circuit Court No. 10 of Harris County.

(b) The Circuit Court No. 10 of Harris County shall give preference to criminal cases. It does not have jurisdiction of eminent domain cases and proceedings.

(c) The terms of the Circuit Court No. 10 of Harris County begin on the first Monday of the months of June, August, October, December, February, and April of each year. Each term continues until the business of the court is disposed of.

(d) The district clerk of Harris County is the clerk of the Circuit Court No. 10 of Harris County and shall receive and collect the fees provided by law in criminal matters.

(e) The sheriffs and constables of this state executing process issued out of the Circuit Court No. 10 of Harris County shall receive the fees fixed by law for executing criminal process.

SECTION 2.061. (a) The name of the County Criminal Court at Law No. 7 of Harris County, Texas, is changed to the Circuit Court No. 11 of Harris County.

(b) The Circuit Court No. 11 of Harris County shall give preference to criminal cases. It does not have jurisdiction of eminent domain cases and proceedings.

(c) The terms of the Circuit Court No. 11 of Harris County begin on the first Monday of the months of June, August, October, December, February, and April of each year. Each term continues until the business of the court is disposed of.

(d) The district clerk of Harris County is the clerk of the Circuit Court No. 11 of Harris County and shall receive and collect the fees provided by law in criminal matters.

(e) The sheriffs and constables of this state executing process issued out of the Circuit Court No. 11 of Harris County shall receive the fees fixed by law for executing criminal process.

SECTION 2.062. (a) The name of the County Criminal Court at Law No. 8 of Harris County, Texas, is changed to the Circuit Court No. 12 of Harris County.

(b) The Circuit Court No. 12 of Harris County shall give preference to criminal cases. It does not have jurisdiction of eminent domain cases and proceedings.

(c) The terms of the Circuit Court No. 12 of Harris County begin on the first Monday of the months of June, August, October, December, February, and April of each year. Each term continues until the business of the court is disposed of.

(d) The district clerk of Harris County is the clerk of the Circuit Court No. 12 of Harris County and shall receive and collect the fees provided by law in criminal matters.

(e) The sheriffs and constables of this state executing process issued out of the Circuit Court No. 12 of Harris County shall receive the fees fixed by law for executing criminal process.

SECTION 2.063. (a) The name of the County Criminal Court at Law No. 9 of Harris County, Texas, is changed to the Circuit Court No. 13 of Harris County.

(b) The Circuit Court No. 13 of Harris County shall give preference to criminal cases. It does not have jurisdiction of

eminent domain cases and proceedings.

(c) The terms of the Circuit Court No. 13 of Harris County begin on the first Monday of the months of June, August, October, December, February, and April of each year. Each term continues until the business of the court is disposed of.

(d) The district clerk of Harris County is the clerk of the Circuit Court No. 13 of Harris County and shall receive and collect the fees provided by law in criminal matters.

(e) The sheriffs and constables of this state executing process issued out of the Circuit Court No. 13 of Harris County shall receive the fees fixed by law for executing criminal process.

SECTION 2.064. (a) The name of the County Criminal Court at Law No. 10 of Harris County, Texas, is changed to the Circuit Court No. 14 of Harris County.

(b) The Circuit Court No. 14 of Harris County shall give preference to criminal cases. It does not have jurisdiction of eminent domain cases and proceedings.

(c) The terms of the Circuit Court No. 14 of Harris County begin on the first Monday of the months of June, August, October, December, February, and April of each year. Each term continues until the business of the court is disposed of.

(d) The district clerk of Harris County is the clerk of the Circuit Court No. 14 of Harris County and shall receive and collect the fees provided by law in criminal matters.

(e) The sheriffs and constables of this state executing process issued out of the Circuit Court No. 14 of Harris County shall receive the fees fixed by law for executing criminal process.

SECTION 2.065. The name of the County Court at Law of Hays County is changed to the Circuit Court No. 1 of Hays County.

SECTION 2.066. The name of the County Court at Law of Henderson County is changed to the Circuit Court No. 1 of Henderson County.

SECTION 2.067. The name of the County Court at Law of Hidalgo County is changed to the Circuit Court No. 1 of Hidalgo County.

SECTION 2.068. The name of the County Court at Law No. 2 of Hidalgo County is changed to the Circuit Court No. 2 of Hidalgo County.

SECTION 2.069. The name of the County Court at Law No. 3 of Hidalgo County is changed to the Circuit Court No. 3 of Hidalgo County.

SECTION 2.070. The name of the County Court at Law of Houston County is changed to the Circuit Court No. 1 of Houston County.

SECTION 2.071. The name of the County Court at Law of Hunt County is changed to the Circuit Court No. 1 of Hunt County.

SECTION 2.072. The name of the County Court of Jefferson County at Law is changed to the Circuit Court No. 1 of Jefferson County.

SECTION 2.073. The name of the County Court of Jefferson County at Law No. 2 is changed to the Circuit Court No. 2 of Jefferson County.

SECTION 2.074. The name of the County Court at Law No. 1 of Lubbock County is changed to the Circuit Court No. 1 of Lubbock

County.

SECTION 2.075. The name of the County Court at Law No. 2 of Lubbock County is changed to the Circuit Court No. 2 of Lubbock County.

SECTION 2.076. The name of the County Court at Law of McLennan County is changed to the Circuit Court No. 1 of McLennan County.

SECTION 2.077. The name of the County Court at Law No. 2 of McLennan County is changed to the Circuit Court No. 2 of McLennan County.

SECTION 2.078. The name of the County Court at Law of Medina County is changed to the Circuit Court No. 1 of Medina County.

SECTION 2.079. The name of the County Court at Law of Midland County is changed to the Circuit Court No. 1 of Midland County.

SECTION 2.080. The name of the County Court at Law No. 1 of Montgomery County is changed to the Circuit Court No. 1 of Montgomery County.

SECTION 2.081. The name of the County Court at Law No. 2 of Montgomery County is changed to the Circuit Court No. 2 of Montgomery County.

SECTION 2.082. The name of the County Court at Law of Nacogdoches County is changed to the Circuit Court No. 1 of Nacogdoches County.

SECTION 2.083. The name of the County Court at Law of Nolan County is changed to the Circuit Court No. 1 of Nolan County.

SECTION 2.084. (a) The name of the County Court at Law No. 1 of Nueces County is changed to the Circuit Court No. 1 of Nueces County.

(b) The Circuit Court No. 1 of Nueces County shall give preference to criminal misdemeanor cases of which original jurisdiction is vested by law in the county courts.

SECTION 2.085. (a) The name of the County Court at Law No. 2 of Nueces County is changed to the Circuit Court No. 2 of Nueces County.

(b) The Circuit Court No. 2 of Nueces County shall give preference to civil cases in which the amount in controversy is not more than $20,000, excluding interest, and to criminal misdemeanor cases that are appealed from justice of the peace and municipal courts.

SECTION 2.086. The name of the County Court at Law No. 3 of Nueces County is changed to the Circuit Court No. 3 of Nueces County.

SECTION 2.087. The name of the County Court at Law of Orange County is changed to the Circuit Court No. 1 of Orange County.

SECTION 2.088. The name of the County Court at Law of Potter County is changed to the Circuit Court No. 1 of Potter County.

SECTION 2.089. The name of the County Court at Law No. 2 of Potter County is changed to the Circuit Court No. 2 of Potter County.

SECTION 2.090. The name of the County Court at Law of

Randall County is changed to the Circuit Court No. 1 of Randall County.

SECTION 2.091. The name of the County Court at Law of Reeves County is changed to the Circuit Court No. 1 of Reeves County.

SECTION 2.092. The name of the County Court at Law of Smith County is changed to the Circuit Court No. 1 of Smith County.

SECTION 2.093. The name of the County Court at Law No. 2 of Smith County is changed to the Circuit Court No. 2 of Smith County.

SECTION 2.094. (a) The name of the County Court at Law No. 1 of Tarrant County is changed to the Circuit Court No. 1 of Tarrant County.

(b) The Circuit Court No. 1 of Tarrant County shall give preference to civil cases in which the amount in controversy is not more than $20,000, excluding interest.

SECTION 2.095. (a) The name of the County Court at Law No. 2 of Tarrant County is changed to the Circuit Court No. 2 of Tarrant County.

(b) The Circuit Court No. 2 of Tarrant County shall give preference to civil cases in which the amount in controversy is not more than $20,000, excluding interest.

SECTION 2.096. (a) The name of the County Criminal Court at Law No. 1 of Tarrant County is changed to the Circuit Court No. 3 of Tarrant County.

(b) The Circuit Court No. 3 of Tarrant County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.097. (a) The name of the County Criminal Court at Law No. 2 of Tarrant County is changed to the Circuit Court No. 4 of Tarrant County.

(b) The Circuit Court No. 4 of Tarrant County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.098. (a) The name of the County Criminal Court at Law No. 3 of Tarrant County is changed to the Circuit Court No. 5 of Tarrant County.

(b) The Circuit Court No. 5 of Tarrant County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.099. (a) The name of the County Criminal Court at Law No. 4 of Tarrant County is changed to the Circuit Court No. 6 of Tarrant County.

(b) The Circuit Court No. 6 of Tarrant County shall give preference to criminal misdemeanor cases. It does not have jurisdiction of eminent domain cases and proceedings.

SECTION 2.100. (a) The name of the County Court at Law of Taylor County is changed to the Circuit Court No. 1 of Taylor County.

(b) If the judge of the Circuit Court No. 1 of Taylor County is absent, disabled, or disqualified, a county judge of Taylor County with the qualifications required of the judge of the circuit court may, at the request of the judge of the circuit court, sit and hold court in the circuit court. If the circuit court judge is incapable of requesting the services of the other judge, the county

judge may hold court in the circuit court without the judge's request. The county judge may not sit or act in a case in the circuit court unless it is within the jurisdiction of the county court.

SECTION 2.101. The name of the County Court at Law of Tom Green County is changed to the Circuit Court No. 1 of Tom Green County.

SECTION 2.102. The name of the County Court at Law No. 1 of Travis County is changed to the Circuit Court No. 1 of Travis County.

SECTION 2.103. The name of the County Court at Law No. 2 of Travis County is changed to the Circuit Court No. 2 of Travis County.

SECTION 2.104. The name of the County Court at Law No. 3 of Travis County is changed to the Circuit Court No. 3 of Travis County.

SECTION 2.105. The name of the County Court at Law No. 4 of Travis County is changed to the Circuit Court No. 4 of Travis County.

SECTION 2.106. The name of the County Court at Law of Val Verde County is changed to the Circuit Court No. 1 of Val Verde County.

SECTION 2.107. The name of the County Court at Law of Victoria County is changed to the Circuit Court No. 1 of Victoria County.

SECTION 2.108. (a) The name of the County Court at Law No. 2 of Victoria County is changed to the Circuit Court No. 2 of

Victoria County.

(b) This section takes effect on January 1, 1984, or on the date that the commissioners court determines the Circuit Court No. 2 of Victoria County is created by entering an order in its minutes, whichever date is earlier.

SECTION 2.109. The name of the County Court at Law of Walker County is changed to the Circuit Court No. 1 of Walker County.

SECTION 2.110. The name of the County Court at Law of Webb County is changed to the Circuit Court No. 1 of Webb County.

SECTION 2.111. (a) The name of the County Court at Law of Wichita County is changed to the Circuit Court No. 1 of Wichita County.

(b) The Circuit Court No. 1 of Wichita County does not have jurisdiction in civil cases in which the amount in controversy exceeds $10,000, excluding interest.

(c) The judges of the County Court of Wichita County and the Circuit Court No. 1 of Wichita County may adopt the rules governing the filing and numbering of cases, the assignment of cases for trial, and the distribution of the work of the courts that they consider necessary or desirable for the orderly dispatch of the business of the courts.

(d) The Circuit Court No. 1 of Wichita County does not have concurrent jurisdiction with the justice courts of Wichita County.

SECTION 2.112. The name of the County Court at Law of Wise County is changed to the Circuit Court No. 1 of Wise County.

SUBCHAPTER C. CREATION OF CIRCUIT COURTS

SECTION 3.001. The Circuit Court No. 1 of

_____ County is created.

SUBCHAPTER D. TEMPORARY PROVISIONS

SECTION 4.001. EFFECTIVE DATE. Except as otherwise provided by Subchapter B of this Act, the Act takes effect September 1, 1983.

SECTION 4.002. OFFICE OF JUDGE. The person serving as judge of a statutory county court on the date that the court is renamed by this Act continues in office as judge of the court as renamed until the general election in 1986 and until his successor is elected and qualified.

SECTION 4.003. REPEALER. (a) Each Act creating a court that is renamed by Subchapter B of this Act is repealed. The repeal of these Acts does not affect the existence of the courts, and the courts as renamed continue in existence as provided by Subchapters A and B of this Act.

(b) The following articles and acts as compiled in Vernon's Texas Civil Statutes are repealed: 1970-1; 1970-2; 1970-3; 1970-4; 1970-5; 1970-6; 1970-7; 1970-8; 1970-9; 1970-10; 1970-11; 1970-12; 1970-13; 1970-14; 1970-15; 1970-16; 1970-17; 1970-18; 1970-19; 1970-20; 1970-21; 1970-22; 1970-23; 1970-24; 1970-25; 1970-26; 1970-27; 1970-28; 1970-29; 1970-30; 1970-31; 1970-31.1; 1970-31.2; 1970-31.10; 1970-31.11; 1970-31.12; 1970-31.13; 1970-31.14; 1970-31.15; 1970-31.16; 1970-31.17; 1970-31.18; 1970-31.20; 1970-31.21; 1970-32; 1970-33; 1970-34; 1970-35; 1970-36; 1970-37; 1970-38; 1970-39; 1970-40; 1970-41; 1970-42; 1970-43; 1970-44; 1970-45; 1970-45a; 1970-46; 1970-47; 1970-48; 1970-49; 1970-50; 1970-51; 1970-52; 1970-53; 1970-54; 1970-55; 1970-56; 1970-57;

1970-58; 1970-59; 1970-60; 1970-61; 1970-62; 1970-62.1; 1970-62.2; 1970-62a; 1970-62b; 1970-62c; 1970-62d; 1970-63; 1970-64; 1970-65; 1970-66; 1970-67; 1970-68; 1970-69; 1970-70; 1970-71; 1970-72; 1970-73; 1970-74; 1970-75; 1970-75a; 1970-76; 1970-77; 1970-78; 1970-79; 1970-80; 1970-81; 1970-82; 1970-83; 1970-84; 1970-85; 1970-86; 1970-87; 1970-88; 1970-89; 1970-90; 1970-91; 1970-93; 1970-94a; 1970-94b; 1970-95; 1970-96; 1970-98; 1970-98a; 1970-98b; 1970-99; 1970-100; 1970-101; 1970-102; 1970-105; 1970-106; 1970-106a; 1970-108; 1970-109; 1970-110b; 1970-110c; 1970-110c.1; 1970-110c.2; 1970-110c.3; 1970-110c.4; 1970-110d; 1970-110e; 1970-110f; 1970-111; 1970-112; 1970-113; 1970-114; 1970-115; 1970-116; 1970-117; 1970-118; 1970-119; 1970-120; 1970-121; 1970-122; 1970-123; 1970-124; 1970-125; 1970-126; 1970-126a; 1970-127; 1970-127a; 1970-128; 1970-129; 1970-130; 1970-131; 1970-132; 1970-133; 1970-134; 1970-135; 1970-136; 1970-136a; 1970-137; 1970-138; 1970-139; 1970-140; 1970-141; 1970-141.1; 1970-141.2; 1970-141.3; 1970-141.4; 1970-141a; 1970-166a; 1970-166d; 1970-223a; 1970-298a; 1970-298b; 1970-298c; 1970-298d; 1970-301; 1970-301a; 1970-301b; 1970-301c; 1970-301d; 1970-301e; 1970-301e.1; 1970-301f; 1970-301f.1; 1970-301g; 1970-305; 1970-305a; 1970-305b; 1970-305c; 1970-311a; 1970-311b; 1970-324; 1970-324a; 1970-324a.1; 1970-324a.2; 1970-324b; 1970-324c; 1970-324d; 1970-332; 1970-332a; 1970-339; 1970-339A; 1970-339B; 1970-339C; 1970-340; 1970-340.1; 1970-341; 1970-341a; 1970-341b; 1970-342a; 1970-342b; 1970-343; 1970-346; 1970-347; 1970-348; 1970-348a; 1970-349; 1970-349A; 1970-350; 1970-350a; 1970-351; 1970-352; 1970-352a; 1970-354; 1970-355; 1970-356; 1970-356a;

1970-357; 1970-358; 1970-359; 1970-360; 1970-361; 1970-362; 1970-362a; 1970-363; 1970-363a; 1970-364; 1970-365; 1970-366; 1970-367; 1970-368; 1970-369; 1970-370; 1970-371; 1970-372; 1970-373; 1970-374; 1970-375; 1970-376; 1970-377; 1970a; 1970-309; 1970-329; 1970-336; 1969a-1; 1969a-2.

SUBCHAPTER E. MISCELLANEOUS PROVISION

SECTION 5.01. **EMERGENCY**. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

VISITING JUDGE PROGRAM

INTERIM CHARGE: Examine Texas' visiting judge program to determine if changes are necessary.

The visiting judge program has been in existence in its present form since 1927 when legislation was enacted that divided the state into nine administrative judicial districts.[1]

Under the provisions of that act (Article 200a, Vernon's Texas Civil Statutes) a presiding judge appointed by the governor has the authority to assign active or retired judges from one court to another as necessary to dispose of case backlogs.

> Retired district judges, as defined by Article 6228(b) of the Revised Civil Statutes of Texas, as amended, who have consented to be subject to assignment, all regular district judges in this state, and all former district judges who were elected at a general election or appointed by the governor; who have not been defeated for reelection; who have not been removed from office by impeachment, the Supreme Court, the governor upon address of the legislature, the State Judicial Qualifications Commission, or by the legislature's abolishment of the judge's court; who are not more than 70 years of age; and who certify to the presiding judge a willingness to serve and comply with the same prohibitions relating to the practice of law that are imposed on a retired judge by Section 7, Article 6228(b) of the Revised Civil Statutes of Texas, 1925, as amended or hereafter amended, may be assigned under the provisions of this Act by the presiding judge of the administrative judicial district wherein such assigned judge resides, and while so assigned, shall have all the powers of a judge thereof. (Sec. 5a)

This section further provides that a presiding judge may assign a judge meeting the above qualifications to another administrative district upon the request of the presiding judge of that district.

In 1961, Article 200a was amended to allow the Chief Justice to "designate and assign judges of one or more Administrative Judicial Districts for service in other Administrative Judicial Districts whenever he deems such assignment necessary to the prompt and efficient administration of justice."[2]

These provisions have given the presiding judges and the Chief Justice the statutory authority to conduct a program for visiting judges for the state district courts.

The need for such a program exists because of the imbalance in size of judicial districts and because a single case of great complexity whether civil or criminal may tie up a court for several weeks.

The visiting judge program is an active one. In 1981, there were 2,150 assignments made throughout the state totaling 7,503 days served. Appendix A to this report shows the complete statistics for 1981.

COSTS OF VISITING JUDGE PROGRAM

Whenever a judge, whether active or retired, is assigned to hear cases in another court costs are accrued that must be compensated. The visiting judge program is paid for by the state and the participating counties and from various funds depending on whether the visiting judge is active or retired and whether the judge is required to be out of the county of his or her residence.

Article 200a was amended in 1961 to provide a per diem for visiting judges to be paid by the state;

> In addition to, and cumulative of, all other compensation and expenses authorized by law and this Act, judges who are required to hold court outside their own districts and out of their own counties under the provisions of this Act, shall recieve a per diem of Twenty-five ($25.00) Dollars for each day, or fraction thereof, which they spend outside their said districts and counties in the performance of their duties; such additional compensation to be paid in the same manner as their salaries are paid by the State upon certificates of approval by the Chief Justice or by the Presiding Judge of the Administrative Judicial District in which they reside. Sec.2a(4)

The twenty-five dollar per diem has not been changed since the amendment was adopted in 1961. The Legislature appropriates funds directly to the Judiciary section of the Comptroller's Department to meet this expense. In fiscal year 1981, $142,000 was expended to cover the per diem.

In addition to the per diem, the state pays the salary of retired judges while they are active as visiting judges. The amount expended is determined by the differential between the judge's retirement pay and the pay received by an active judge in the county the retired judge is serving. That amount is the state base pay for district judges plus the county salary supplement, if any. (These supplements are often paid by the County in which the visiting judge serves.)

The difference between the yearly salary of an active judge and the retirement being received by the retired judge is then divided by 260 working days per year to produce

the per day figure that the retired judge will receive while activated. In fiscal year 1981 that amount was approximately $115 per day. The total amount expended was $536,423. This amount is paid out of an appropriation to the Employees Retirement System.

In addition to the expenses incurred by the state to pay for the visiting judge program, the counties in which the visiting judges are serving pay for the actual expenses of the judge, such as travel and lodging. These expenses are minimized by using retired judges that reside within the county that they serve. All expenses must be approved by the presiding judge or by the Chief Justice.

SUMMARY OF STATE COSTS

For fiscal year 1981 the state expended approximately $142,000 out of appropriations to the Judiciary Section of the Comptroller's Office and $536,000 from appropriations to the Employees Retirement System for a total state cost of $678,000 out of the General Revenue Fund.

The figures for assignments of visiting judges as found in Appendix A are for calendar year 1981 and therefore do not match exactly those for the fiscal year. However, both are equivalent twelve month periods and are used together to approximate cost effectiveness of the visiting judge program.

The total number of days served by visiting judges in 1981 was 7,503. Calculating 260 work days per year this is equivalent to nearly 29 full time judges serving the state for that year. The salary of a state district judge

for fiscal year 1981 was $42,500. If 29 new district judges had been used to try those cases that were tried by visiting judges the additional cost to the state for fiscal year 1981 would have been over $1.2 million. The actual amount spent on the visiting judge program ($678,000) is not much more than half that figure. In addition the state realized a considerable savings in payments to the Judicial Retirement System.

When it is considered that visiting judges are utilized only where there is a clearly recognized need for their services, then the cost-effectiveness of this program can be thought to be even higher than the figures above would indicate.

By using retired judges who can bring their years of experience to serve the state as needed, and by using the services of active judges without filled dockets, the visiting judge program is performing a valuable function in a most efficient manner. From a legislative point of view we do not see any need for change in the visiting judge program. We invite the judiciary to develop any changes that they see fit that would enhance this program.

Indeed, we would recommend that the visiting judge program as it now serves district courts be expanded to serve the Courts of Appeals. The Courts of Appeals were given a greater role in the judiciary when they were expanded in jurisdiction to hear criminal cases as well as civil cases. The Legislature has attempted to anticipate

the increased caseload by adding new judges to these courts. Still, there will be imbalance from court to court. Some Courts of Appeals will catch up on their dockets while others will fall behind. Currently many cases are referred from one court to another because of this imbalance. But a visiting judge program could be of help at the appellate level. Individual judges could help those courts with the highest caseloads on a temporary basis as needed. Moreover, and more importantly, retired appellate judges could be called upon to serve.

Statutory authority for the assignment of retired appellate judges already exists under Article 1812 of Vernon's Texas Civil Statutes. In order for this authority to be effective, appropriations to the Judiciary Section of the Comptroller's Office and to the Employees Retirement System must be made to cover the Courts of Appeals as appropriations now cover the district courts.

The Office of Court Administration estimates that it would cost $87,500 per fiscal year to meet expenses for assigned appellate judges to serve a total of 1,000 days a year. In addition, the use of retired appellate judges for 1,000 days a year would cost approximately $136,000 per year based on the salary differential formula used for retired district judges. If the use of retired appellate judges can be as cost-effective as that for retired district judges, we feel this is an expense well worth undertaking. It will add more flexability to the ability of

of the Courts of Appeals to dispose of cases efficiently.

RECOMMENDATION: The Legislature should appropriate necessary funds to the Judiciary Section of the Comptroller's Office and to the Employees Retirement System to facilitate the use of retired appellate judges in the Courts of Appeals under the direction of the Chief Justice of the Supreme Court.

[1]Chapter 156, Acts of the 40th Legislature, Regular Session 1927, as amended.

[2]Chapter 423, Acts of the 57th Legislature, Regular Session, 1961.

ASSIGNMENTS OF JUDGES

	FIRST DIST	SECOND DIST	THIRD DIST	FOURTH DIST	FIFTH DIST	SIXTH DIST	SEVENTH DIST	EIGHTH DIST	NINTH DIST	TOTALS
By Presiding Judges of Administrative Judicial Districts										
Assignments within Districts:										
Number of assignments										
(1) Active Judges	108	199	39	27	19	12	46	41	83	574
(2) Retired Judges	339	126	92	95	63	27	53	77	26	898
(3) Former Judges	38	101	0	0	0	0	0	89	0	228
Days served										
(1) Active Judges	349	397	62	64	34	12	102	56	123	1,199
(2) Retired Judges	1,345	680	28	366	142	84	169	350	68	3,232
(3) Former Judges	126	643	0	0	0	0	0	191	0	960
Assignments to other Districts:										
Number of assignments										
(1) Active Judges	13	14	21	6	2	1	21	23	6	107
(2) Retired Judges	18	3	45	46	8	13	30	21	3	187
(3) Former Judges	4	4	0	0	0	0	0	0	0	8
Assignments from other Districts:										
Number of assignments										
(1) Active Judges	23	23	16	6	15	3	0	20	1	107
(2) Retired Judges	60	123	8	10	42	2	2	6	1	254
(3) Former Judges	1	3	0	1	1	0	0	2	3	11
Days served										
(1) Active Judges	81	137	6	22	44	11	0	47	3	351
(2) Retired Judges	345	694	5	51	202	3	6	34	16	1,356
(3) Former Judges	5	17	0	5	6	0	0	10	1	44
By the Chief Justice of the Supreme Court										
Assignments to the Districts:										
Number of assignments										
(1) Active Judges	0	0	0	0	1	0	0	0	0	1
(2) Retired Judges	1	37	0	6	10	0	0	23	0	77
Days served										
(1) Active Judges	0	0	0	0	1	0	0	0	0	1
(2) Retired Judges	1	182	0	30	37	0	0	110	0	360
TOTALS										
Number of Assignments	570	612	155	145	151	44	101	258	114	2,150
Days served	2,252	2,750	101	538	466	110	277	798	211	7,503

TRIAL COURT DELAY

INTERIM CHARGE: Examine methods of reducing trial court delay,

and

Study methods to help equalize the caseloads of district judges in urban areas.

INTRODUCTION

The two studies above were listed separately in the interim charges to this Committee. However, after considerable research on both topics we feel that it would be convenient to combine these studies. Trial court delay is a problem that most profoundly affects courts in urban areas. The equalization of caseloads of district judges in urban areas is itself one method of reducing delay. Ways to effect that equalization are explored here as part of the overall effort to reduce trial court delay.

Trial court delay is a complex problem caused by a variety of factors. Remedies will have to come through the concerted efforts of many parties.

First, the Legislature must provide an adequate number of new courts as the need arises. The Legislature must then be certain that state and local financial resources are adequate to meet the needs of the court system. The Legislature and local governments must also promote alternatives to judicial litigation and make these alternatives readily available to the public.

Second, the State Judiciary needs to be certain that the state court system is working most efficiently. Since the

Judiciary is a separate and coequal branch of government, this Committee does not presume to oversee the administrative policy of the courts. However, the Legislature does have the responsibility to be sure that laws pertaining to the Judiciary do not constrain the efficient administering of justice.

Finally, the legal community, the attorneys who practice daily before the courts, have the responsibility to promote rules and practices that work to the best advantage of all citizens.

During the regular session of the Legislature this Committee worked long and hard to develop legislation to create new district courts for Texas. In the course of its deliberations and during public hearings much was said about the extensive backlog of cases in the trial courts. That this backlog exists, particularly in the rapidly growing urban areas of the state, was well documented and of concern to this Committee. Certainly new courts were needed. The situation was made more critical in 1981 because no district court bill was both passed and signed into law in the two previous sessions of the Legislature. The two omnibus court bills that were passed in the Sixty-seventh session will create thirty-seven new district courts over a two-year period ending on January 1, 1983. The total number of courts on that date will stand at 347.

During the session, the Committee began to seek alternate answers to the growing demand for district courts. Numerous members of local bar associations presented this Committee with comprehensive statistics concerning the need for new courts. The implication was that new courts would have to be developed

to match increased filings, increased crime, increased population, increased time of litigation, etc.

In 1960, there were 155 district courts in the State of Texas. These courts served a population of 9.5 million people. 110,000 cases were filed in these courts. In 1980, the number of district courts had doubled to 310. This more than kept pace with the population increase of the state which grew to 14.2 million. But by 1980, the number of cases filed grew to 420,000, almost a four-fold increase. The number of cases pending in district courts grew from 150,000 in 1960 to 475,000 in 1980.

If the rate of cases filed increases during the next twenty years as it has in the past twenty, then by the year 2000 we could expect over 1.6 million cases to be filed. If the Legislature were to increase the number of district courts accordingly we would require 1,200 district courts in the state.

While it is a contributing factor, the booming population of Texas is not the main cause of this dramatic increase in cases being filed. Other factors have generated a startingly greater increase in the amount of litigation of all kinds as a percentage of the population.

The general increase in crime over the past twenty years has been a major contributing factor. Yet in 1980, criminal cases still accounted for only 21% of the cases filed. Civil cases comprised 77% of the filings while juvenile cases made up 2%.

Profound social changes experienced nation-wide have been

the primary reason for the increase in cases that come before our courts. Most of these appear on the civil docket. The increase in divorce and related problems of child custody and child support is probably the single biggest cause of the rise in case filings. In 1980, divorce accounted for 43% of the civil filings.

Alternatives to traditional adjudication of civil cases are already in place in Texas and are proving successful. Last interim, this Committee reported on the use of masters in Family District Courts in Dallas and Harris Counties. These programs have contributed significantly to the reduction of delay in domestic relations cases.

The recent development of neighborhood justice centers as described earlier in this report is a method that will directly reduce filings by providing alternatives for dispute resolution.

Another study earlier in this report discussed the need for a more significant role for our county court at law system. These courts, if given unified and expanded jurisdiction, could dramatically ease the caseload in district courts. This would be even more effective if the minimum jurisdiction of district courts were raised in those areas that have county courts at law so there would be no overlap in jurisdiction between the two levels of courts.

This Committee has attempted to determine the attitudes of district judges concerning court delay. A letter was sent to each district judge in the state asking them for comments and observations. The responses that were received indicate a variety of opinions among the judges on causes of court delay.

While the survey to the District Judges did not receive an overwhelming response, those who did reply expressed definite opinions and offered the Judicial Affairs Committee thought provoking suggestions as to the causes and possible solutions of the trial court delay problem. While there were almost as many different suggestions as there were letters received, one major point was reiterated to this committee: trial court delay is a multifaceted issue that cannot be solved merely through legislative action.

Lack of adequate funding seemed to be the most pervasive concern of the judges. One of the major complaints is that the county commissioners' courts do not give enough attention or money to the district courts. Many courts do not have space or the adequate staffing necessary to handle the administrative duties of the court and to leave the judge's time free to give his full attention to the dispensation of the docket. At the present time, District Judges have to wear too many hats--judge, legal clerk, secretary, etc. Many judges feel that additional staff members such as a briefing clerk, an administrative aide or a docket coordinator would be very beneficial if not essential to help alleviate the present trial court delay situation. Some suggestions for obtaining the funding for adequate staffing were for the legislature to find a way to encourage the commissioners' courts to provide more funding for district courts; to have the State of Texas assume the financial responsibility for providing staffing for district courts (including a court reporter, a

briefing attorney, a court coordinator and a secretary); and/or to remove the district court system entirely out of the responsibility of the counties and place the full financial responsibility upon the state. While some judges also felt that funding for additional courts was the answer to trial court delay, it was also asserted that until the present courts were staffed adequately, new courts would not solve the problem. (It was suggested by one judge that the addition of new courts, along with the funding for these courts, be tied to the census data obtained every ten years.)

In addition to funding problems, many judges expressed the view that attorneys played a large role in trial court delay, either through stalling tactics or through frivolous suits. It is felt by some judges that if a civil case does not go to trial, it is often because the legal counsel does not prepare it for trial in hopes of dragging out a case in order to reach a settlement. It was suggested that some attorneys take advantage of the time involved in obtaining a jury trial as well as take advantage of discovery methods as means of delay.

In this regard it was suggested that discovery methods available under the rules of the court be reduced. Also, the party calling for a jury trial should be responsible for the cost of the jury, regardless of the outcome of the trial. One judge recommended that judges do all sentencing to avoid a case being tried on the hopes that a jury would assess a lesser penalty. Other suggestions included: that the fee

for a jury trial should be raised in keeping up with inflation; that the rules of civil procedure be amended to set time limits for voir dire; that the number of challenges allowed be reduced in both civil and criminal cases; that the number of jurors in district cases be reduced from 12 to 6 persons (with the possible exception of capital murder cases); that the rates of pre-judgement and post-judgement interest rates be raised to keep up with inflation and to discourage frivolous appeals; and that the Legislature examine the effectiveness of current laws regarding penalties for frivolous actions and enact further legislation of this nature.

A very few number of the judges responding felt that trial court delay and unequal caseloads were aggravated by "non-working" judges who did not put in adequate time at work. It was recommended that authority be given to either the Judicial Commission, the Presiding Judge, or the Texas Supreme Court to guarantee that all judges were working an adequate number of work hours. It was also maintained that judges should take the responsibility in seeing that cases proceed to trial and that the caseload remains current. (And this brings us full circle to the problem of providing adequate support staff for the judges.)

Many other suggestions were made by the District Judges for reducing trial court delay. These proposals are listed as follows:

1. make use of a court coordinator system or a master to improve the flow of cases through the court. (While some judges were in favor of a central docket, others felt an

While not every suggestion made was included in this report because of space limitations, we feel that it generally summarizes the majority of thoughts and suggestions expressed to this committee by the District Judges, and we wish to express our appreciation to the ones who shared their time and expertise with us. The Judicial Affairs Committee acknowledges that the Judiciary is responsible for its own rules and procedures. We agree that the individual district judge knows best how to administer his or her own court, how to schedule cases, what type of docketing system works best, etc. However, judicial independence sometimes means a lack of communication among courts and results in an imbalance of caseload and inefficient use of the court system. To that end, the Chief Justice of the Supreme Court should have ultimate authority to equalize caseloads. The Chief Justice should appoint the Administrative Judges (they are now appointed by the Governor) and the Administrative and the Presiding Judges of the various counties should have sufficient authority to equalize caseloads and utilize the visiting judge program.

Also, the Legislature should cease the practice of designating newly created courts as to preference. It is now common when a new court is created to state in the legislation that the court shall "give preference to criminal matters" or "give preference to civil matters". While these designated preferences are not binding, they serve to perpetuate specialization that inhibits the transfer of cases. Courts should all be created as courts of general jurisdiction and it should

individual court docket was more effective.)

2. make district courts general jurisdiction courts.

3. use pretrial conferences in jury cases to encourage early settlement

4. accelerate the assigning of rural judges to urban benches and provide incentives for rural judges to participate in this.

5. provide for the nonpartisan election of judges.

6. pass legislation permitting binding arbitration in commercial disputes between businesses.

7. abolish the concurrent jurisdiction of county and district courts to eliminate duplication of effort; raise the minimum jurisdictional amounts for district courts in civil matters, thus raising the jurisdictional level of county courts.

8. abolish the requirement in an uncontested competency hearing that only a jury can commit a defendant to a mental institution.

9. have the Legislature provide that it is not necessary for a district judge to hear uncontested divorce cases where there are no children and no significant property involved. (Perhaps after a waiting period, a district or county clerk could issue a certificate of divorce with proper proof from both parties.)

10. in ordinary routine civil cases, require that more than one attorney in a firm be familiar with a case in order to expedite cases in the event that one of the attorneys involved is tied up on another matter.

be left to the local judiciary and the presiding judge to determine if specialization of jurisdiction is desireable.

Case Study: Harris County

In order to get a first hand look at the problem of court congestion and delay, the Committee on Judicial Affairs held a public hearing in the largest metropolitan area in the state--Harris County.

The hearing was held at the Commissioner's Court in Houston on May 17, 1982. The response to this hearing, both from judges and practicing attorneys was very positive. There was a general appreciation of the problem by all who attended and a willingness to take steps to remedy the situation.[1]

The first witness before the Committee was Mr. Ray Hardy, District Clerk of Harris County. Mr. Hardy provided the Committee with statistics and detailed analysis of the 1981 trial docket in the county. A glance at one table submitted by Mr. Hardy indicates the degree of trial court delay in civil cases.

Table A

COMPUTER-BASED ANALYSIS OF JURY TRIAL ACTIVITY FOR 1981

Case Type Category	Average Age of Cases File Date to Assignment	Average Age of Cases File Date to Completion
Auto-Personal Injury/Damages	47 months	49 months
Other-Personal Injury/Damages	49 months	49 months
Workers' Compensation	22 months	23 months
Accounts/Contested Notes	46 months	49 months
Other Civil Cases (General)	45 months	46 months

Table A continued--

Based upon the computerized sampling, the average age across case type categories, from the date of filing to the date of assignment to trial was approximately forty-three (43) months; from file date to completion averaged forty-four (44) months.

Further information provided by Mr. Hardy shows that the situation has worsened over the past three years. Part of the problem can be traced to the failure of the Legislature to add district courts to Harris County during this period, a time when the county was experiencing tremendous growth.

However, four new district courts were added under S.B.596 and all were effective on May 13, 1981. Testimony indicated that these new courts have not been operating as effectively as we could hope. Lack of adequate courtroom space was cited as the primary problem. Harris County has not provided the proper facilities for these courts even after a year.

Under H. B. 958, an additional court for Harris County was added effective September 1, 1981, and two more courts will come into being on January 1, 1983. The Legislature intentionally phased in these courts at the request of the Harris County Commissioners in order to give them time to prepare. It is distressing to learn that courts which were added to the county over a year ago are still not adequately being provided court space.

The same problem has occurred with the addition of new courts in Dallas County.

All governing bodies have a limited amount of fiscal resources. Currently, when the Legislature creates a new

district court all that is provided financially is an appropriation for the judge's salary. Counties must provide courtroom facilities, support personel, office equipment and supplies, and salary supplements.

As these costs have risen, and as the tax base of the county has become more strained, the district courts have suffered.

This Committee feels that the Legislature needs to review state support for the district court system. In order to provide the courts with the necessary resources to do the job we ask of them, the state should consider providing additional state appropriations. Either the state should support the court system directly, or the Legislature should allow the counties to increase the various court related process and filing fees to raise the funds necessary for the courts. If this were done the Legislature should insure that revenues raised through these fees are actually spent on the courts.

While it is the concern and responsibility of the Legislature and local governments to provide sufficient numbers of courts and adequate resources for those courts, evidence indicates that the root of court delay is more fundamental. Outside observers naturally assume that a large caseload per judge results in trial delay. Actually backlog is more a measure and a symptom of trial court delay than a cause. While case volume is a contributing factor, recent analysis reveals that delay is something inherent in the judicial process.

A recent study by the National Center for State Courts attests to this fact. After eighteen months of research the general finding was:

> We are persuaded that few of the traditional explanations of trial court delay differentiate faster from slower courts. Delay--or comparatively tardy disposition of civil and criminal cases--does not emerge as a function of court size, judicial caseload, "seriousness" of cases in the caseload, or the jury trial rate.[2]

The conclusion reached in that study is that for local courts there are among judges and among the attorneys that practice before those courts, "established expectations, practices, and informal rules of behavior." These practices, which the study calls the "local legal culture", predetermine in a large measure how long it will take for a case to come to trial. In other words, if it is accepted among the legal community of a given area that it takes two years for a civil case to "develop", then that expectation tends to come true. It is a self-fullfilling prophecy that defies the addition of new courts, changes in calendaring procedures or addition of new staff.

An even more recent study by the National Institute of Justice supports this concept and broadens it to include cultural characteristics of the community and refers to the local norms as the "local socio-legal culture."[3]

Obviously, if delay is to be reduced in Texas trial courts, fundamental changes must occur in the expectations of the "local legal culture". That means that those who make up

the "local legal culture", the attorneys and judges, must overcome expectations that have been reenforced by years of practice.

While it is incumbant upon the Legislature and the counties to provide for the essential structure of the state judiciary, it is up to the legal community to utilize that structure most efficiently.

This Committee is encouraged by the efforts of the State Bar of Texas to address this problem. A State Bar Committee on Court Costs and Delay has already begun work. The Chairman of this Bar committee, Mr. Randy J. McClanahan, testified before the Judicial Affairs Committee during its public hearing in Houston on May 17, 1982.

At that time, Mr. McClanahan said that the focus of his committee's study would be primarily on delays in litigation. Mr. McClanahan expressed a willingness to work with the Legislature in any way in order to implement solutions to the problem of trial court delay. In addition, the staff of the Judicial Affairs Committee has attended meetings of the Bar Committee and ideas and approachs to the problem were exchanged.

If the analysis of the "local legal culture" is correct, then the efforts of the State Bar Committee on Court Costs and Delay are extremely important. In order to change notions about delay in litigation, notions which apparently fulfill themselves, then all members of the legal community must be involved in finding solutions.

More importantly, once methods of improvement are developed, then an educational effort directed at the legal

community must be made in order to effect changes in the prevailing attitudes. This Committee feels that the State Bar of Texas is the proper organization for this effort. We hope that the work and recommendations of the Committee on Court Costs and Delay receives maximum attention and support by the State Bar.

FOOTNOTES

[1]Persons who testified at the May 17 Judicial Affairs Meeting in Houston, Texas:

Ray Hardy, District Clerk, Harris County

Lynn N. Hughes, Judge 189th District Court, Houston

Charlie Price, Associate Justice, 14th Court of Appeals, Houston

Frank G. Evans, Chief Justice, 1st Court of Appeals, Houston

Michael Connelly, attorney, Houston

Randy J. McClanahan, attorney, and Chairman, State Bar Committee on Court Cost and Delay, Houston

Joe M. Pirtle, Municipal Judge, Seabrook

Robert Honenberger, attorney, Houston

Ted Busch, First Assistant District Attorney, Harris County

Jim Lewis, administrative aide to County Judge Jon Lindsay, Harris County

[2]Thomas Church, Jr. et al, Justice Delayed, The Pace of Litigation in Urban Trial Courts, (Williamsburg, Virginia: National Center for State Courts, 1978) p.5

[3]Managing the Pace of Justice, An Evaluation of LEAA's Court Reduction Program, Executive Summary, (Washington: National Institute of Justice, 1981) p. 26

OFFICE OF COURT ADMINISTRATION
TEXAS JUDICIAL COUNCIL

REPORT ON

PERSONNEL AND EQUIPMENT NEEDS

OF THE

COURTS OF APPEALS

SEPTEMBER, 1982

Pursuant to H.R. 29, 67th Legislature

PREPARED BY THE

OFFICE OF COURT ADMINISTRATION

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September 2, 1982

Representative Ted B. Lyon, Jr.
3434 N. Hwy. 67, Suite C-106
Mesquite, Texas 75149

Dear Representative Lyon,

H.R. 29 of the First Special Session of the 67th Legislature requested the state Office of Court Administration, in cooperation with the House Judicial Affairs Committee, to study the personnel and equipment needs of each of Texas' 14 courts of appeals.

The method used in preparing this study included four factors: (1) compilation and analysis of caseload statistics on the cases filed and work of the courts since receiving jurisdiction of criminal cases on September 1, 1981; (2) comparison of these workload measures to those which had been projected prior to the Regular Session and upon which personnel and equipment need recommendations were made in a special study conducted by the National Center for State Courts; (3) analysis of the degree to which personnel and equipment provided the courts by the 67th Legislature has enabled the courts to handle the increased caseload resulting from acquiring jurisdiction of criminal cases; and (4) review of the resulting recommendations for increased personnel and equipment by the Council of Justices of the Courts of Appeals.

Enclosed is a copy of the report of the Office of Court Administration pursuant to H.R. 29.

Sincerely yours,

C. Raymond Judice
Administrative Director

CRJ/de

Enclosure

ENROLLED

H.R. No. 29

R E S O L U T I O N

WHEREAS, Texas voters in 1980 approved a constitutional amendment changing the name of the state's courts of civil appeals to the courts of appeals and expanding their intermediate appellate jurisdiction to include most criminal as well as civil cases; and

WHEREAS, In order that the courts of appeals might adequately handle their newly assigned criminal case load, the 67th Legislature, Regular Session, increased their collective size by a total of 28 judges (S.B. 265); and

WHEREAS, The same legislature in its General Appropriations Act (H.B. 656) augmented personnel budgets for the state's courts of appeals based on estimated increases in staffing needs; nevertheless, in view of the marked reorganization and broadened jurisdiction of the 14 courts, a more thorough analysis of their personnel requirements, with respect to both type and number, appears justifiable; now, therefore, be it

RESOLVED, That the House of Representatives of the 67th Legislature, 1st Called Session, hereby request the Office of Court Administration of the Texas Judicial System, in cooperation with the House Judicial Affairs Committee, to study the personnel and equipment needs of each of Texas' 14 courts of appeals; and, be it further

RESOLVED, That the Office of Court Administration of the Texas Judicial System, in cooperation with the House Judicial Affairs Committee, analyze comparative needs related to court clerks, briefing attorneys, legal counselors, legal secretaries, and other specialized staff and report its recommendations to the House of Representatives of the 68th Legislature; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the administrative director of the Office of Court Administration of the Texas Judicial System.

Florence

REPORT ON PERSONNEL AND EQUIPMENT NEEDS OF THE COURTS OF APPEALS

During the 67th Regular Session in 1981, the Legislature adopted extensive legislation implementing the constitutional amendment that conferred criminal jurisdiction on the 14 courts of appeals. As part of that legislation, 28 new judgeships were added to the courts of appeals. While limited increases were also made in the appropriations for staff and equipment, the new judicial positions absorbed most of the appropriations increase. Representative Buck Florence, Chairman of the House Judicial Affairs Committee, authored H.R. 29 which directed that an interim study be made to determine whether the limited increases provided for additional staff and equipment have proved to be adequate to enable the courts of appeals to meet their new responsibilities of disposing of all intermediate appeals in an orderly and speedy manner. H.R. 29 requests the state Office of Court Administration, in cooperation with the House Judicial Affairs Committee to study the personnel and equipment needs of each of Texas' 14 courts of appeals. The following subcommittee was appointed to work with the state Office of Court Administration on the study:

Rep. Ted Lyon-Chairman
Rep. Smith Gilley-Vice-Chairman
Rep. Henry Allee
Rep. Ashley Smith
Rep. Anita Hill

The methodology employed in conducting this study included four facets: (1) compilation and analysis of caseload statistics on the cases filed and work of the courts since receiving jurisdiction of criminal cases on September 1, 1981;

(2) comparison of these workload measures to those which had been projected prior to the Regular Session and upon which personnel and equipment need recommendations were made in a special study conducted by the National Center for State Courts; (3) analysis of the degree to which personnel and equipment provided the courts by the 67th Legislature has enabled the courts to handle the increased caseload resulting from acquiring jurisdiction of criminal cases; and (4) review of the resulting recommendations for increased personnel and equipment by the Council of Justices of the Courts of Appeals.

WORKLOAD OF THE COURTS OF APPEALS

The Legislature based its decisions concerning the needs of the courts of appeals on caseload statistics showing that civil case filings in those courts had increased over the past few years at a rate of about 10 percent per year. Projections from these figures indicated that about 3,000 civil cases would be filed in fiscal year 1982. Through the first 11 months of fiscal year 1982, there were 2,596 civil cases filed. This multiplies out to 2,832 cases for the year, somewhat less than the estimate used by the Legislature.

On the criminal side of the dockets, however, caseload projections were significantly below the number actually filed in these courts since September 1, 1981. Between 1977 and 1980, new criminal cases filed in the Court of Criminal Appeals had held steady at about 3,100 per year. The level of appropriations provided these courts by the last Session was based upon the assumption that approximately 3,100 criminal cases would be filed in the courts of appeals each year. Through the first 11 months of fiscal year 1982, however, 6,050 criminal cases had been filed in these courts. This projects out to 6,600 for all of 1982--113 percent higher than the 3,100 figure with which the Legislature was working.

In addition, very late in the Session, Senate Bill 265 was amended to direct the Court of Criminal Appeals to transfer part of its pending caseload to the courts of appeals on September 1, 1981. Under the provisions of that act, 1,637 cases were transferred to the courts of appeals. As a result of these transferred cases, and the much heavier than anticipated new criminal appeals being filed in these courts, it is now anticipated that approximately 8,237 intermediate criminal appeals will be filed in these courts during fiscal year 1982. This is 166 percent more than the 3,100 upon which the last Legislature based its appropriations decisions.

The criminal case filings for fiscal year 1982 may be misleading as a predictor of future filings, however. For some not fully expected reason or reasons, a vast number of criminal cases was filed in the courts of appeals soon after they obtained criminal jurisdiction on September 1, 1981. In fact, almost half (2,943) of the 6,050 criminal appeals filed during the first 11 months of fiscal year 1982 were filed during September, October, and November. Since that time, filings have dropped back somewhat. During the six months from February to July, 1982, criminal filings totalled 2,417. This would multiply out to 4,834 per year; still far more than projected in 1980, but less drastic than the 6,600 annual figure calculated by looking at all of the first 11 months of the fiscal year.

During the same period when the large rise in criminal filings occurred, the courts of appeals increased their rate of disposition of pending cases. From February through July, 1982, an average of 212 civil cases and 384 criminal cases were disposed of each month by the courts of appeals. This equates to an annual disposition rate of 2,544 civil cases (34 per justice) and 4,608 criminal

cases (61 per justice). By comparison, during fiscal year 1981, before they received criminal jurisdiction, the courts of (then civil) appeals disposed of a total of 2,574 civil cases, for an average of 50 cases per justice.

While appeals are being disposed of at an increased rate in these courts, at the end of July, 1982, there still were 2,256 civil cases and 4,335 criminal cases pending. If no more new cases were filed and the courts continued to dispose of cases at the rate of the preceding six months, it would take 10.6 months to eliminate the civil backlog and 11.3 months to dispose of all pending criminal cases. In fact, during this six month period, the criminal backlog increased by an average of 19 cases per month while the civil backlog increased by an average of 24 cases per month.

As the above caseload statistics indicate, the courts of appeals must increase the number of cases disposed if the disposal rate is to equal the number of new cases filed and the current backlog of cases is to be reduced. During the 1981 legislative session, as noted above, emphasis was placed on the addition of new justices to deal with the impact of added criminal jurisdiction. Experience during the interim has shown that the additional justices were needed even more than was anticipated during 1981. However, if the courts of appeals are to operate at maximum efficiency and use the present number of justices to the maximum extent, the greatest need presently is for support personnel and automated equipment. In addition, to maximize the use of existing judicial resources, Art. 1812, V.T.C.S. should be amended to provide a more workable method for the temporary assignment of retired and active justices to courts experiencing a temporary surge in the number of cases filed and to those courts where one or more of the justices are absent due to illness, vacations, or other

reasons. (Appendix B of this report contains recommended amendments to Article 1812, V.T.C.S. and the General Appropriations Act to implement this recommendation.)

A recent informal survey has identified at least eight retired justices who would be willing to serve on a temporary assignment basis. It is presently estimated that these retired justices could provide approximately 1,000 days of temporary service each year to the courts of appeals and that this level of additional temporary service could be utilized by the courts in an effective manner to reduce the current backlog of cases and to prevent a continuing rise in the number of cases pending on the dockets of these courts. The Office of Court Administration and the Employees Retirement System have submitted budget requests for the necessary funding for this program.

Provided that the personnel and equipment recommended in this report are funded by the Legislature, the present number of justices on these courts should be sufficient to provide for the orderly and speedy disposition of all intermediate appellate cases. The recommendations for adequate support staff and equipment are based on the following factors: (1) the present judges will be able to work most efficiently when they have adequate support staff; (2) the larger courts are already approaching the maximum number of justices for optimum collegial efficiency of an appellate court; (3) the addition of more appellate court judges increases the liability of the Judicial Retirement System; and (4) the automated equipment requested would reduce the need to continuously seek additional secretarial and clerical help.

STAFFING THE COURTS OF APPEALS

The support personnel of the courts of appeals can be categorized into three groups: (1) judicial support; (2) central legal staff; and (3) clerical support.

Judicial Support

Judicial support staff consists of briefing attorneys (also referred to as "law clerks") and judicial secretaries. Briefing attorneys typically are recent law school graduates who work for the court for one year. Each is assigned to serve a particular justice, doing research, writing memoranda, etc., on cases assigned to the justice. (Judges of the Court of Criminal Appeals have, in addition, a research attorney who is more experienced than the briefing attorney, is paid better, and remains in this position for a number of years.) Judicial secretaries work for the individual justices, handling their correspondence, typing their opinions, etc. During the 1982-83 biennium, the Legislature provided each justice of the courts of appeals with one briefing attorney, and an average of approximately one secretary for each two justices. Presently, most of the justices share secretaries, resulting in undue delays and inefficiencies in the preparation of opinions.

One of the greatest present needs of the courts is for additional legal research and briefing assistance for the justices. The addition of staff at this level should markedly improve the efficiency of the courts and noticeably increase the rate of dispositions. Based upon several years of experience by the Court of Criminal Appeals in the use of research assistants in addition to briefing attorneys, each justice on the courts of appeals should be provided

with one briefing attorney and one research attorney. A research attorney position will provide the justices with more experienced legal assistance and a more permanent staff position which will afford some continuity and avoid the disruption which occurs when new briefing attorneys must be trained. In addition each justice should be provided with one judicial secretary to provide secretarial support to the justice, the briefing attorney, and the research attorney.

The need for this additional assistance increased when the courts assumed criminal jurisdiction. During fiscal year 1981, when only civil cases were heard, the justices of the 14 courts of appeals each disposed of an average of 41 cases by written opinion. During fiscal year 1982, based upon eleven months' experience, it appears that the justices will dispose of by opinion 47 criminal cases and 27 civil cases for a total of 74 deciding opinions per justice. When opinions which do not dispose of cases--such as dissents and concurrences--are added to this, it amounts to a significant rise in the legal support and secretarial needs of an individual justice. If the backlog of cases is to be actually reduced during the 1984-85 biennium, the output of opinions per justice must increase even more, and the need for legal support and secretarial help will be even greater.

Central Legal Staff

Attorneys on a central legal staff, as contrasted with briefing attorneys, are accountable to the court as a whole rather than to an individual justice. A survey conducted by the Institute for Judicial Administration and published in the Spring, 1982, issue of "IJA Report" shows that as of September 1, 1981, 23 of 32 responding states utilized central legal staffs on some or all of their intermediate appellate courts.

The A.B.A. Standards Relating to Appellate Courts provide that while the functions of a central legal staff may differ from court to court, the duties of such a staff may properly include:

(1) Monitoring and reviewing cases coming before the court to assure compliance with procedural rules, and making recommendations for disposition of routine procedural matters in accordance with criteria established by the court;

(2) Preparing case summaries, including procedural history, facts, and principal issues and authorities, for the court's use in managing its caseflow and conducting its deliberations;

(3) Reviewing all matters presented in propria persona and taking measures necessary to put them in correct and intelligible form;

(4) Supplementing the research of the judges' individual law clerks; and

(5) Acting for the court in supervising preparation of complex records.

A central legal staff can provide capabilities in these and other areas that may be difficult to achieve through the law clerks who serve individual judges. Because it is centrally organized, a legal staff can address the court's caseflow as a whole rather than being limited to those matters already assigned to individual judges. Insofar as the court's internal procedures are specialized - for example, the handling of appellate procedural questions or the review of applications for interlocutory appeal - a central staff can assist the judges respon-

sible for such matters. The National Center for State Courts, in a memorandum numbered RIS 82.051, dated May 6, 1982, lists the following as advantages of a central legal staff:

(1) simply adding more law clerks poses substantial administrative burdens for the individual judge, who must hire them and supervise their work;

(2) central staff attorneys may be supervised by one judge, or by a staff supervisor, and may be hired by one judge, or by a committee of judges;

(3) numerous law clerks can insulate a judge from his colleagues, thus reducing the collegiality and frequent interaction which contributes to the effectiveness of the court; and

(4) assignment of work can be more efficient if there is a central legal staff.

During the last Session of the Legislature, one staff attorney was requested for each three-judge panel of each of the courts of appeals. However, funds were appropriated for only one staff attorney position for each court of appeals regardless of size, except for the Dallas court--the largest--which was allotted two positions. During the interim, a grant from the Criminal Justice Division of the Office of the Governor was obtained which provided for an additional central legal staff attorney for each of the eight largest courts.

A recent informal survey of the present staff attorneys indicates that these positions have been used in a very flexible manner, depending on the specific needs of the individual courts and the non-availability of other staff in particular areas. Generally, the staff attorneys have been utilized by the courts

of appeals most often for the screening of and preparation of memoranda for the disposition of criminal cases. The use of the staffs in this manner presumably is one reason the courts have been able to dispose of an average of 61 criminal cases per justice since September 1, 1981, while maintaining a per justice disposition rate of 34 civil cases, as compared to 50 per justice in 1981. While these additional positions have proved extremely helpful, the individual courts are still below the recommended level of one central staff attorney for each three-judge panel.

As the experience of the courts of appeals in utilizing central legal staff has been most positive and productive it is again requested that the Legislature provide one central staff attorney for each three-judge panel of each of the courts of appeals, that supervising attorney positions be provided for those courts having three or more panels, and that the central legal staff be provided with appropriate secretarial and automated equipment support.

Clerical Support

The present clerical support staff of the courts of appeals consists of the clerk of the court (and a chief deputy clerk in the larger courts); one or more deputy clerks; and secretarial or stenographic help for the clerk's office.

The assumption of criminal jurisdiction by the courts of appeals has literally swamped many of the clerks' offices with work. From September 1, 1981, through July 31, 1982, 8,646 cases--both civil and criminal--had been filed in the courts of appeals. This compares to 2,796 cases filed during the entire year ending August 31, 1981.

The processing of all those cases requires a high level of competency and efficiency in the clerks' offices. The management and supervisory duties of the

clerk of the court have become critically important, while at the same time the reporting, accounting and budgeting functions of the office require more and more of the clerk's attention. The amount of financial and budgetary reporting required of the clerks has made all the more difficult their primary task of assuring the swift, orderly, and efficient flow of cases through the courts of appeals. These courts are required to file an average of 61 reports each year to various state and federal agencies. For this reason, it is recommended that a new accounting position be provided in each clerk's office. This employee would assume the responsibilities of the accounting functions and would enable the clerk to devote more time to the more important aspects of ensuring the swift, orderly and efficient flow of cases through the courts. The present level of clerical and secretarial support for each clerk's office must also be increased to meet the new responsibilities.

The recommended staffing patterns for the various sizes of courts are shown in Appendix C.

APPROPRIATIONS FOR COURTS OF APPEALS EMPLOYEES

The courts of appeals currently receive line item appropriations for the hiring of specific classified employees. This type of appropriation for support personnel placed undue limitations on the courts in responding to changing personnel needs. They are "locked in" to the positions itemized for a period of two years. By contrast, the Office of the Attorney General and many other state agencies are given great flexibility in the hiring of classified personnel. The Attorney General, within the dollar constraints of the budget for each division of his office, may hire employees for any legal, legal support, or paralegal

support position within the classification system. This approach has obvious benefits in that it allows the Attorney General's Office to hire whatever personnel it needs--within monetary limits--to get the job done, without being restricted to those positions which it estimated it would need at the time of its budget request two years before.

The courts of appeals--like the Office of Attorney General and other state agencies--have varying needs, not all of which can be accurately predicted with any degree of certainty at the time of budget submission. Because of fast changing conditions, the appellate courts of the State of Texas should have the same flexibility in employing personnel as is allowed the Attorney General, and many other Legislative and executive branch agencies, and should be authorized--within the limitations of their individual budgets--to hire personnel for any position classified for use by the courts or judicial agencies of the State. To allow these courts the flexibility to make maximum use of the funds appropriated by the Legislature for classified salaries, the appropriations for each court should contain a rider authorizing each court to utilize these funds for any position listed in the state classification system or such other positions established and approved by the state classification office for use by the courts or judicial agencies of the state.

Travel and Professional Education

Directly related to the personnel needs of the courts is the need for funding for travel and professional education. Changing methods of court operations and appellate procedures make it essential that the judicial, clerical and legal staffs of the courts of appeals remain up to date at all times to ensure the efficient operation of the courts and the maximum utilization of

available personnel. This is especially important in Texas due to the practice of transferring a large number of cases between these courts for docket equalization purposes under the directives of Article 1738, V.T.C.S. These personnel should have access to meetings, seminars, or conferences directly relating to their duties. Since the courts of appeals are located in 13 different cities across the state, attendance at any such event will necessarily require that almost all participants incur travel expenses.

Based upon prior experience and considering current needs of the courts of appeals, the following funding levels are recommended for travel and professional education:

Chief Justice (each)..... $3,300 per fiscal year
Associate Justices (each)..... $2,400 per fiscal year
Support Personnel (total per count)
(3-4 judge court)..... $3,000 per fiscal year
(6-7 judge court)..... $4,500 per fiscal year
(9-13 judge court)..... $6,000 per fiscal year

EQUIPPING THE COURTS OF APPEALS

Based on a detailed analysis of presently available equipment and their individual experiences in handling both civil and criminal appeals during the past year, the Conference of the Courts of Appeals Justices, in conjunction with the state Office of Court Administration, determined the future equipment needs of the courts of appeals. Specific needs have been identified in three areas: (1) enhancement of the present automated word and data processing equipment; (2) audio recording equipment; and (3) legal research service and equipment.

Automated Word and Data Processing Equipment

The most pressing equipment needs facing the courts of appeals are in the area of word and data processing. Modern appellate courts handling the volume of cases which now face the courts of appeals can no longer operate efficiently, if at all, by the methods of prior years. The large number of reports required to be filed by these courts to various state and federal agencies, now averaging 61 per year, presently require a large portion of the time of the clerical staff. Court clerks can no longer afford the luxury of having each required notice, each standard order, or each form letter individually typed. Word processing filed equipment can reduce the typing time involved in these routine and repetitive chores to a fraction of what would be required manually. Word processing can also be of great assistance to the justices and their staffs, particularly with the preparation of opinions which might go through several drafts before a final version is produced. Without word processing equipment, each new draft requires complete retyping of an opinion or memorandum and raises the possibility of typing errors creeping in. Automated equipment, on the other hand, requires typing only the changes or corrections.

With the vastly increased caseload these courts are now handling, and the increasing number and complexity of required reports, data processing applications have become crucial to the clerks of the courts of appeals. Without the assistance of data processing, it becomes impossible for the clerk to track cases through the court and efficiently manage the flow of appeals, given the volume of cases now being filed and the growing backlogs. The old method of doing everything by hand simply requires too much time and too many hands to deal with the caseload of a busy appellate court. Because of this large volume of cases, some courts of appeals will never get their dockets under control or efficiently manage their caseloads without the aid of an automated case tracking

system. While all courts of appeals need such a system, the larger courts, as a result of the expanded caseloads, could not function without it.

Prior to September 1, 1981, the staff of the Office of Court Administration, in conjunction with the State Auditor's Office and representatives of the courts of appeals, conducted an intensive review of word processing applications in order to properly identify the automated equipment needs of the courts to determine equipment specifications to meet these needs. The committee researched and viewed demonstrations of automated equipment from all vendors whose equipment met the minimum identified needs of the courts of appeals. Following this detailed study the committee selected the AM Jacquard J100 system as the system which could best provide these needs. This system was then demonstrated to and approved by the clerks of the courts of appeals and a special committee of justices of the courts.

The Office of Court Administration has also purchased a compatible system to enable it to develop the necessary programming packages for the individual courts of appeals to make the most efficient use of this equipment. The first program to be developed and furnished to the courts was the case management system. The automated case management system was designed around a manual case management system which the clerks of the courts of appeals and the staff of the state Office of Court Administration had previously designed. An accounting and payroll system is currently being developed. Since September 1, 1981, the two programmers on the staff of the state Office of Court Administration have spent an estimated 333 working man/days on programming these systems.

By using compatible equipment and programming, the interchangeability of programs will allow direct automated exchange of docket information between the

courts involved in cases transferred by the Supreme Court under its responsibility of equalizing the dockets between the various courts and the potential for future direct exchange of information by telephone lines between the various Courts of Appeals having compatible equipment.

Because of these factors it is highly desirable that all appellate courts obtain compatible data processing equipment. Those few courts who have purchased incompatible equipment can continue to use that equipment for word processing functions - i.e., opinion writing - in their courts but should purchase compatible equipment for the case management and accounting functions in the clerks' offices. This would enable those courts to utilize the software programming now being developed and would result in a significant savings in both time and money to each of the courts are well as to the state.

Word and data processing equipment needs of the courts fall into four categories: (1) memory and central processing units; (2) disk drives; (3) terminals; and (4) printers.

The needs of the individual courts of appeals differ, since some courts presently have some of this equipment installed or on order but need additional equipment, while others need complete systems. Breakdowns by individual court are included in Appendix D to this report. In general, each court's system will consist of a central processing unit (CPU)--which is the heart of the word/data processing system--and either 128, 256, or 512 thousand bytes (characters) of memory (the storage capacity for information). It will have disk drives for sufficient data storage, one or more terminals (work stations), and one or more printers.

Each court of appeals should be provided sufficient funds for capital outlay to provide it with the recommended configuration of word and data processing equipment. This is essential to enable the courts to fulfill their responsibilities of processing and disposing of cases in a timely manner.

Audio Recording Equipment

Chief Justice Joe R. Greenhill of the Supreme Court of Texas pointed out the advantages of tape recording equipment for an appellate court during the Council of Justices meeting in February 1982. Chief Justice Greenhill advised his colleagues on the courts of appeals that oral arguments of cases before the Supreme Court are taped for three reasons. First, it allows any absent justice to listen to the audio tape and hear the oral argument. Second, it allows a justice who was present to refresh his memory. Third, it allows a briefing attorney, who may be assigned to research a particular case or point of law, to hear the arguments of counsel.

Any one of these reasons would justify the one-time outlay of funds for the purchase of such equipment for the courts of appeals. Based upon an examination of the system employed by the Supreme Court, provision for the following is recommended:

(1) two tape recorders, and

(2) one transfer unit (which operates both recorders, turning the second one on as soon as the tape runs out on the first recorder, thus avoiding any loss during tape change);

(3) four (or more) microphones, depending on the size of the court;

(4) one headset for transcription; and

(5) one foot pedal for transcription.

Automated Legal Research

For several years, major law firms and appellate courts in other states have made advantageous and cost-efficient use of automated legal research systems such as Westlaw or Lexis. The Council of Justices recommended that each court should request funds for the installation, maintenance and use of such a legal research system.

It should be noted that it is presently impossible to estimate the amount of time each court will use this legal research equipment per month. However, a representative of one of the vendors has indicated that for this initial period the following amounts of equipment and usage time would be within a reasonable estimate:

for courts having 3-4 judges -one terminal and 10 hours per month usage time
for courts having 6-8 judges -one terminal and 15 hours per month usage time
for courts having 9 judges -two terminals and 20 hours per month usage time
for courts having 12-13 judges -two terminals and 25 hours per month usage time

Providing that all courts decide to use the same service, there is a possibility that a single vendor may agree to determine the hourly rate for billing purposes for each court based upon the total amount of hours used by all courts. Therefore, each court would have the advantage of the reduced cost per hour of use of the equipment based upon the total amount of usage by all courts.

APPENDIX A (p.1)

COURTS OF APPEALS
CRIMINAL CASES FILED

	COURT OF CRIMINAL APPEALS AVERAGE PER MONTH			COURTS OF APPEALS														
	1979	1980	Jan. - Aug. 81	Sept. 1981	Oct. 1981	Nov. 1981	Dec. 1981	Jan. 1982	Feb. 1982	Mar. 1982	Apr. 1982	May 1982	June 1982	July 1982	Total to Date Since Sept. 1, 1981		Average Per Month	Average Last 6 Mos.
Houston (1st)	43	40	41	431	76	42	43	52	32	62	60	89	42	65	994	÷ 11 =	90	58
Fort Worth	14	12	15	90	52	22	22	21	22	20	24	23	25	27	348	÷ 11 =	32	24
Austin	18	17	17	51	29	17	26	16	22	9	17	18	19	23	247	÷ 11 =	22	18
San Antonio	19	18	13	41	54	35	31	30	34	32	23	18	30	25	353	÷ 11 =	32	27
Dallas	61	56	73	335	255	104	71	74	104	121	90	74	71	83	1,382	÷ 11 =	126	91
Texarkana	6	5	5	6	23	24	14	5	9	3	6	6	2	11	109	÷ 11 =	10	6
Amarillo	14	16	18	62	39	32	34	12	14	22	19	85	16	17	352	÷ 11 =	32	29
El Paso	14	18	9	16	45	24	14	14	7	25	22	52	15	16	250	÷ 11 =	23	23
Beaumont	8	8	9	54	20	9	16	7	26	19	4	15	14	21	205	÷ 11 =	19	12
Waco	6	6	5	36	27	7	11	7	9	8	10	3	7	11	136	÷ 11 =	12	8
Eastland	6	6	5	30	16	15	10	7	4	9	15	101	10	9	226	÷ 11 =	21	25
Tyler	7	7	6	42	26	30	14	7	9	14	13	4	7	8	174	÷ 11 =	16	9
Corpus Christi	10	10	13	19	103	37	30	11	15	23	18	14	17	15	302	÷ 11 =	27	17
Houston (14th)	43	40	41	451	68	48	42	49	23	53	63	60	50	65	972	÷ 11 =	88	52
	272	256	271	1664	833	446	378	312	330	420	384	562	325	396	6,050	÷ 11 =	550	403
ANNUALIZED	3,267	3,072	3,251	19,968	9,996	5,352	4,536	3,744	3,960	5,040	4,608	6,744	3,900	4,752	6,600			4,834

COURTS OF APPEALS
CIVIL CASES FILED

	1979	1980	Jan. - Aug. 81	Sept. 1981	Oct. 1981	Nov. 1981	Dec. 1981	Jan. 1982	Feb. 1982	Mar. 1982	Apr. 1982	May 1982	June 1982	July 1982	Total to Date Since Sept. 1, 1981		Average Per Month
Houston (1st)	272	244	204	22	22	28	20	24	23	27	24	25	26	21	262	÷ 11 =	24
Fort Worth	154	193	158	11	19	12	15	27	14	15	21	16	23	30	203	÷ 11 =	18
Austin	204	235	166	21	24	16	18	14	15	24	19	22	23	36	232	÷ 11 =	21
San Antonio	245	284	224	32	34	23	14	14	17	27	29	29	28	33	280	÷ 11 =	25
Dallas	474	439	352	40	41	33	35	40	33	48	41	33	50	49	443	÷ 11 =	40
Texarkana	60	71	48	6	6	4	2	9	6	5	3	5	6	2	54	÷ 11 =	5
Amarillo	147	122	86	15	14	9	17	16	11	9	14	10	11	14	140	÷ 11 =	13
El Paso	101	134	93	15	10	11	19	9	8	12	14	8	10	17	133	÷ 11 =	12
Beaumont	131	126	74	15	10	11	13	8	17	14	8	8	16	10	130	÷ 11 =	12
Waco	85	90	71	13	7	4	8	5	6	8	13	6	8	5	83	÷ 11 =	8
Eastland	56	79	44	5	6	5	7	5	7	8	11	6	9	5	74	÷ 11 =	7
Tyler	61	86	53	6	6	8	9	6	9	12	8	7	9	9	89	÷ 11 =	8
Corpus Christi	177	196	138	14	15	15	15	21	14	22	24	17	18	21	196	÷ 11 =	18
Houston (14th)	278	322	236	30	27	21	31	23	20	32	18	25	23	27	277	÷ 11 =	25
	2,445	2,621	1,947	245	241	200	223	221	200	263	247	217	260	279	2,596	÷ 11 =	236
ANNUALIZED	2,445	2,621	2,921	2,940	2,892	2,400	2,676	2,652	2,400	3,156	2,964	2,604	3,120	3,348	2,832		

APPENDIX A (p.3)

COURTS OF APPEALS
CASES DISPOSED

	Avg. Civil Disposed Per Mo. Jan. - Aug. 81	Sept. 81 Disposed		Oct. 81 Disposed		Nov. 81 Disposed		Dec. 81 Disposed		Jan. 82 Disposed		Feb. 82 Disposed		Mar. 82 Disposed		Apr. 82 Disposed		May 82 Disposed		June 82 Disposed		July 82 Disposed		Total to Date Since Sept. 1, 1981			Average Per Month		Average Last 6 Mos.	
		Civil	Crim	Civil	Crim	Civil	Crim	Civil	Crim	Civil	Crim	Civil	Crim	Civil	Crim	Civil	Crim	Civil	Crim	Civil	Crim	Civil	Crim	Civil	Crim		Civil	Crim	Civil	Crim
Houston (1st)	24	23	0	13	2	9.	13	14	74	13	16	20	45	30	47	22	63	19	39	8	26	29	66	200	391	÷ 11 =	18	36	21	48
Fort Worth	14	18	5	29	19	22	19	40	17	15	24	19	38	17	38	22	42	20	33	17	38	15	28	234	301	÷ 11 =	21	27	18	36
Austin	12	6	0	16	8	16	10	15	10	5	12	7	13	19	26	15	5	9	15	19	14	8	7	135	120	÷ 11 =	12	11	13	13
San Antonio	15	12	1	17	5	26	20	17	22	7	12	8	14	15	9	12	12	12	18	20	32	10	24	156	169	÷ 11 =	14	15	13	18
Dallas	32	25	0	33	50	22	100	25	66	23	62	40	94	35	98	33	85	40	93	32	74	27	45	336	767	÷ 11 =	31	70	35	82
Texarkana	13	11	0	10	0	12	9	5	12	5	10	9	10	16	6	10	13	9	18	8	17	5	7	102	102	÷ 11 =	9	9	10	12
Amarillo	10	5	4	11	10	6	12	14	30	3	20	7	21	11	20	11	33	10	20	12	23	4	16	94	209	÷ 11 =	9	19	9	22
El Paso	12	9	0	12	3	7	3	14	7	8	5	11	3	14	19	3	31	12	25	18	36	11	25	119	157	÷ 11 =	11	14	12	23
Beaumont	13	12	1	29	11	15	19	13	13	8	12	9	13	15	15	15	7	9	13	14	18	1	1	140	123	÷ 11 =	13	11	11	11
Waco	12	7	1	17	5	15	8	5	8	6	8	9	6	20	12	13	17	10	11	14	9	8	19	125	105	÷ 11 =	11	10	12	12
Eastland	13	6	0	11	3	10	15	13	22	2	16	9	20	6	11	6	26	5	9	9	3	22	14	99	139	÷ 11 =	9	13	10	14
Tyler	8	12	0	13	3	8	3	13	6	4	16	13	2	7	5	10	7	5	10	8	6	8	14	101	72	÷ 11 =	9	7	9	7
Corpus Christi	16	6	0	20	10	7	22	18	22	13	23	12	25	12	13	22	18	24	31	24	41	4	6	162	211	÷ 11 =	15	19	16	22
Houston (14th)	25	17	1	27	21	16	28	22	41	16	53	19	62	19	45	19	87	44	46	23	54	26	83	248	521	÷ 11 =	23	47	25	63
Totals	219	172	13	258	191	192	281	228	350	128	289	192	366	236	364	213	446	228	381	226	391	178	355	2251	3387	÷ 11 =	205	308	212	384
Avg. Per Justice	4	2.29	.17	3.44	2.01	2.56	3.74	3.04	4.67	1.71	3.85	2.56	4.88	3.15	4.85	2.84	5.95	3.04	5.08	3.01	5.21	2.37	4.73	30.01	45.16		2.7	4.1	2.8	5.1
X 12 Mo.	48	27	2	41	24	31	45	36	56	20	46	31	59	38	58	34	71	36	61	36	63	28	57	360	542		33	50	34	61
ANNUALIZED TOTAL	2628	2064	156	3096	1812	2304	3372	2736	4200	1536	3468	2304	4392	2832	4368	2544	5352	2736	4572	2712	4692	2136	4260	2456	3695				2544	4608

Article 1812, V.T.C.S. currently authorizes the Chief Justice of the Supreme Court to temporarily assign active or retired justices of a court of appeals to sit on another court. However, the law allows no reimbursement of expenses of assigned justices, nor has any appropriation therefor ever been made. Past experience with the assignment of retired district judges under the provisions of 200a, V.T.C.S., which is fully funded, has proven to be extremely successful. An amendment to Art. 1812, below, and an adequate appropriation would allow retired justices assigned to temporary service on courts of appeals under the provisions of Article 1812, V.T.C.S., to receive the same expenses, per diem, and pay as is now provided for retired district judges who are assigned to district courts under the provisions of Article 200a. It is anticipated that this activity could provide relief to the various Courts of Appeals when one or more experience a temporary surge in the number of cases filed or when one or more justices of a court are absent due to illness, vacations, or other reasons. This procedure would be especially useful to those courts which have only three or four justices as present law requires a panel of three justices to hear cases.

Use of these retired justices in this manner may also reduce the future need for an ever increasing number of cases to be transferred from one court of appeals to another for docket equalization purposes. In addition, an aggressive use of retired justices on temporary basis in this manner should reduce the need for adding additional permanent justices to the courts of appeals with the resulting necessary increase in staff and equipment support and in the state's liability for judicial retirement.

It is recommended that paragraph (d) of Art. 1812, V.T.C.S. be amended to read:

"(d) A Justice of the Court of Appeals may be assigned temporarily to another Court of Appeals by the Chief Justice of the Supreme Court regardless of whether a vacancy exists in the Court of Appeals to which he is assigned. A qualified retired justice or judge of the Supreme Court, the Court of Criminal Appeals or a court of appeals may be assigned by the Chief Justice to a Court of Appeals for active service regardless of whether a vacancy exists. When a regular or retired justice or judge is assigned pursuant to this paragraph out of the county of his residence, he shall, in addition to all other compensation permitted or authorized by law, receive actual expenses in going to and returning from the assignment, actual living expenses and a per diem of Twenty-five dollars ($25.00) for each day, or fraction thereof while in the performance of his duties on assignment, to be paid by the state upon certificates of approval by the Chief Justice of the Supreme Court or the Chief Justice of the Court of Appeals to which the justice is assigned. A regular justice assigned to a court of appeals sitting out of the county of his residence shall receive pro-rata for the time serving on assignment, additional compensation from the county or counties paying additional compensation pursuant to Article 6819a-18a, Vernon's Texas Civil Statutes, to an associate justice of the court of appeals to which the regular justice is assigned. A retired justice or judge shall receive pro-rata from the time serving on assignment from moneys appropriated from the General Revenue Fund for such purpose an amount representing the difference between all of the judicial retirement benefits of such justice or judge and the salary paid by the state to an associate justice of a court of appeals, and from the county or counties paying additional compensation pursuant to Article 6819a-18a to an associate justice of the court of appeals to which assigned, a pro-rata amount of additional compensation for the time serving on assignment."

It is recommended that an Item 4 be added to the General Appropriations Act, Judiciary Section, Office of Court Administration, to read as follows:

	For the Years Ending August 31, 1984	August 31, 1985
"4. Travel and living expenses and per diem compensation for regular and retired justices and judges assigned for service pursuant to Article 1812, V.T.C.S. estimated to be	$	$

It is recommended that Item 4.a.(4) of the General Appropriations Act, Judicial Retirement System, be amended to read as follows:

	For the Years Ending August 31, 1984	August 31, 1985
"(4) To provide for payment to former judges and retired justices and judges who are called to duty pursuant to Article 200a, V.T.C.S., as amended, Paragraph (d) of Article 1812, V.T.C.S., as amended, Subchapter B, Chapter 41, Title 110B, V.T.C.S., or as otherwise provided by law, there is hereby appropriated an amount estimated to be	$	$

APPENDIX C

COURTS OF APPEALS
RECOMMENDED STAFFING PATTERNS
FY 84 - FY 85

Number of Justices on Court:	3	4	6	7	9	13
Personnel Recommended:						
Judicial Support						
Research Attorneys	3	4	6	7	9	13
Briefing Attorneys	3	4	6	7	9	13
Secretaries	3	4	6	7	9	13
Central Staff						
Chief Staff Attorney					1	1
Staff Attorneys	1	1	2	2	3	4
Secretaries	1	1	1	1	2	3
Clerical Support						
Clerk	1	1	1	1	1	1
Chief Deputy	1	1	1	1	1	1
Accountant	1	1	1	1	1	1
Deputy Clerks			2	2	3	4
Clerk III or Stenographer III	1	1	1	2	2	2

APPENDIX D

COURTS OF APPEAL

AUTOMATED WORD/DATA PROCESSING EQUIPMENT

	Equipment Installed As of 9/1/82					Equipment on Order					Additional Equipment Needs				
Court	Mem	CPU	Disk	Terminal	Printer	Mem	CPU	Disk	Terminal	Printer	Mem	CPU	Disk	Terminal	Print
1st - Houston	128	OG	24MG	3	1	512	F		1	1			24MG	6	2
2nd - Ft. Worth	128	OG	24MG	3	1						512	F	24MG	4	2
3rd - Austin											* 512	F	24MG	3	2
4th - San Antonio	128	OG	24MG	5	2						512	F	24MG	1	1
5th - Dallas	128	OG	24MG	4	1	512	F						24MG	9	4
6th - Texarkana											* 512	F	24MG	3	2
7th - Amarillo	128	OG	24MG	2	1	256	F		1		512			1	1
8th - El Paso	128	OG	24MG	2	1						512	F		2	1
9th - Beaumont	128	OG	24MG	2	1						512	F		2	1
10th - Waco											* 512	F	24MG	3	2
11th - Eastland											* 512	F	24MG	3	2
12th - Tyler											* 512	F	24MG	3	2
13th-Corpus Christi	128	OG	24MG	5	2		F				512		24MG	2	1
14th - Houston	128	OG	24MG	6	2	512	F						24MG	4	2

Mem - 123, 256, 512 is in Thousand Bytes of Memory (Characters)
CPU - OG Means Original CPU, F - Means Faster CPU
Disk - 24MG Means 24 Million Characters on line at one Time

* 3rd - Austin has CPT Word Processing System
* 6th - Texarkana, 10th - Waco, 11th - Eastland, and 12th - Tyler have IBM Word Processing Equipment